

AG Opinion Number 95-003

September 28, 1995
Scott W. Bean
State Superintendent of Public Instruction
Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111

RE: Opinion No. 95-003 Relationship Between Tax Levy for Debt Service for Bonds Issued Under Utah Municipal Bond Act and Tax Levy for Debt Service and Capital Outlay Authorized by Utah Code Ann. § 53-16-104(1)(c)

Dear Superintendent Bean:

You have asked for an opinion on the relationship, if any, between the Utah Municipal Bond Act ("UMBA") (Title 11, Utah Code Ann.) and the equalized debt service and capital outlay foundation program found in the Public Education Code (Title 53A, Utah Code Ann.).

I. ISSUE

Can a school district levy the debt service and capital outlay tax authorized by Utah Code Ann. § 53A-16-104(1)(c) (Supp. 1994) of .0024 per dollar of the taxable value, irrespective of whether the district is also levying the unlimited tax authorized by section 11-14-19 of UMBA (Utah Code Ann. § 11-14-19 (1992))?

II. SHORT ANSWER

Except in one highly unlikely situation (see paragraph IV. D. below), a school district's authority to levy the debt service and capital outlay tax authorized by Utah Code Ann. § 53A-16-104(1)(c) (Supp. 1994) of .0024 per dollar of the taxable value is not affected by whether the school district is also levying a tax to service bonds issued under the authority of UMBA, or by the amount of the tax being levied to service the bonds issued under the authority of UMBA. Each provides separate, independent authorization for school districts to levy taxes to service debt.

III. RELEVANT PARTS OF RELEVANT UTAH CONSTITUTIONAL PROVISIONS AND STATUTES

1. Utah Constitution Art. XIV, Sec. 4

When authorized to create indebtedness as provided in Section 3 of this Article, no . . . school district . . . shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein, the value to be ascertained by the last assessment for State and County

purposes, previous to the incurring of such indebtedness; . . .

2. Utah Code Ann. § 11-14-1(1) (1992)

(1) "Municipality," for the purpose of this chapter, includes . . . school districts, Any municipality may, in the manner and subject to the limitations and restrictions contained in this chapter, issue its negotiable bonds for the purpose of paying all or part of the cost of acquiring, improving, or extending any one or more improvements, facilities, or property which the municipality is authorized by law to acquire. Any municipality may also issue such bonds for the acquisition of or the acquisition of an interest in any one or more or combination of the following types of improvements, facilities, or property to be owned by the municipality or to be owned jointly by two or more municipalities, or for the improvement or extension of any such wholly or jointly owned facility or property:

* * * * *

(l) educational facilities, including without limitation, schools, gymnasiums, auditoriums, theaters, museums, art galleries, libraries, stadiums, arenas, and fairgrounds;

* * * * *

3. Utah Code Ann. § 11-14-19 (1992)

Any bonds issued hereunder in such manner that they are not payable solely from revenues other than those derived from ad valorem taxes shall constitute full general obligations of the municipality, for the prompt and punctual payment of principal of and interest on which the full faith and credit of the municipality are pledged, and the municipality is hereby expressly required, regardless of any limitations which may otherwise exist on the amount of taxes which the municipality may levy, to provide for the levy and collection annually of ad valorem taxes without limitation as to rate or amount on all taxable property in the municipality fully sufficient for such purpose. If by law ad valorem taxes for the municipality are levied by a board other than its governing body, the taxes for which provision is herein made shall be levied by such other board and the municipality shall be under the duty in due season in each year to provide such other board with all information necessary to the levy of taxes in the required amount. Such taxes shall be levied and collected by the same officers, at the same time and in the same manner as are other taxes levied for the municipality. If any municipality shall neglect or fail for any reason to levy or collect or cause to be levied or collected sufficient taxes for the prompt and punctual payment of such principal and interest, any person in interest may enforce levy and collection thereof in any court having jurisdiction of the subject matter, and any suit, action or proceeding brought by such person in interest shall be a preferred cause and shall be heard and disposed of without delay. All provisions of the constitution and laws relating to the collection of county and municipal taxes and tax sales shall also apply to and regulate the collection of the taxes levied pursuant to this

section, through the officer whose duty it is to collect the taxes and money due the municipality.

4. Utah Code Ann. § 11-14-20 (1992)

This act is intended to afford an alternative method for the issuance of bonds by municipalities and shall not be so construed as to deprive any municipality of the right to issue its bonds under authority of any other statute, but nevertheless this act shall constitute full authority for the issue and sale of bonds by municipalities.

5. Utah Code Ann. § 53A-16-104 (Supp. 1994)

(1) (a) Each local school board shall impose a tax rate of .0001 per dollar of taxable value for a school district equalized capital outlay and debt service foundation program.

(b) The .0001 tax rate shall be considered a part of the .0024 tax rate authorized under Subsection (c).

(c) Except as otherwise provided in Subsection (1)(d), a local school board may levy a tax not to exceed .0024 per dollar of taxable value for debt service and capital outlay.

(d) If a school district has imposed a .0024 tax rate under this section and more than 75% of the revenues from that tax rate must be used for debt service, then the district may impose an additional tax rate to offset any lost revenue under Subsection (1)(a).

* * * * *

IV. ANALYSIS

The question you have asked focuses on whether there is a conflict between two statutes: Utah Code Ann. § 53A-16-104(1)(c), which provides that a school district may levy a maximum tax of .0024 of the taxable value of property within the school district for debt service and capital outlay; and Utah Code Ann. § 11-14-19, which provides that if a municipality (including a school district) issues general obligation bonds, the municipality (or school district) is required to levy whatever tax rate is necessary on the taxable property within the municipality in order to service the debt.

In order to understand the relationship between the two statutes in question, it is necessary to examine the legislative history of Utah Code Ann. § 53A-16-104(1)(c) and the UMBA.

A. Legislative History of Utah Code Ann. § 53A-16-104(1)(c).

What is now Utah Code Ann. § 53A-16-104(1)(c) has undergone a number of changes in its wording and its numbering in the Utah Code over the past 44+ years. The forerunner of this statute was first enacted in 1951 as a result of the crowded condition of schools due to the "baby boom" after the end of World War II. In section 1 of the 1951 "School Building Survey" act, (H.B. No. 146, 1951 L. Utah Ch. 86) ("1951 Act"), the Legislature noted: [T]he school plants, including equipment and sites, of some districts have become substandard and the cost of bringing such school plants up to a

minimum standard appears beyond the ability of such school districts to assume alone. It is therefore the purpose of this Act to provide supplemental financial assistance to such districts to meet this emergency, and this Act shall be construed liberally to this end.

In addition, section (3) of the 1951 Act provided:

A school district shall be eligible to receive emergency supplemental state aid for school building purposes when it has demonstrated a need for such aid beyond its ability to provide financially for the same by its own efforts, in accordance with the provisions of this Act. Such need must be for funds in excess of the funds which the district itself can raise by taking the following action:

(a) Exhausting the legal, permissible bonding power of the district. If the school district is bonded near its capacity at the time it makes application for supplemental state building funds, upon approval of the State Board of Education it may provide (sic) the additional funds to equal full bonding capacity from other resources not included in the levies required by this Act.

(b) Levying for debt service and capital outlay, including the acquisition of sites, construction of buildings, furnishings and equipment for same or remodeling or modernizing existing school plants, a tax levy of either twelve mills for a period of four years or ten mills for a period of five years, the district to select between the two alternative plans, which levy may be diminished by deducting therefrom any current legal levies for school building purposes, including levies for debt service. The school districts of this state are hereby authorized to make such special additional levies for the purposes herein provided by resolution of the Board of Education of the district. (Emphasis added.)

Over the years, the language of subsection 3(b) of the 1951 Act evolved into the current section 53A-16-104(1)(c).

The provisions of the 1951 Act were re-enacted almost verbatim for two-year periods in 1953 and 1955. Then, in 1957, the Legislature re-enacted, as a separate, stand-alone statute, the provisions of subsection 3(b) of the 1951 Act, and extended those provisions for a ten-year period. Section 1 of the 1957 Act, in relevant part, provided:

The school districts of the State of Utah are hereby authorized to make a tax levy at a rate not to exceed twelve mills as determined by resolution of the board of education of the district for the purpose of providing funds for debt service and capital outlay, including the acquisition of sites, construction of buildings, purchase of furnishings and equipment for same, or for remodeling or modifying existing school plants. (Emphasis added.)

The bill itself did not designate what sections of the Utah Code the bill's provisions would become. When the provisions of the 1957 Act were placed in the Utah Code, Section 1 became Utah Code Ann. § 53-7-8.1. This was the language of the predecessor of the current section 53A-16-104(1)(c) in 1965, when UMBA was passed.

The provisions of Utah Code Ann. § 53-7-8.1 were extended for another ten years in both 1967 and 1977. In 1985, the statute was amended to read, in its entirety, "A local school district is authorized to levy a tax not to exceed .0024 for debt service and capital outlay." The 1987 Legislature then reduced the maximum levy authorized under that section by .0004, to .0020. It also required local school districts to reduce their levies for capital outlay by .0004, but then imposed a levy of .0004 for use in a "local district equalized incentive program." Finally, the 1987 legislation authorized local districts to levy an additional .0004 tax for capital outlay and debt service if the local district's capital outlay and debt service tax rate under Utah Code Ann. §§ 53-7-8.1, 53-7-23, and 53-11-30 was insufficient to service scheduled capital outlay and debt service obligations. In 1988, the Legislature divided Title 53 into Title 53A (Public Education) and Title 53B (Higher Education). Utah Code Ann. § 53-7-8.1 was renumbered as Utah Code Ann. §§ 53A-16-104. The Legislature also restored the tax rate local school districts were allowed to levy for capital outlay and debt service to .0024, and repealed the "local district equalized incentive program," effective July 1, 1989. However, the 1989 Legislature again reduced by .0004 the tax a local district was authorized to levy for its own use for capital outlay and debt service, but then authorized a school district to levy an additional tax of .0004 if the State Board of Education determined that the total capital outlay and debt service tax rate authorized for the district by Utah Code Ann. §§ 53A-17-104, 53A-17-113, and 53A-21-110 was not sufficient to satisfy the school district's capital outlay or debt service obligations.

In 1992, the Legislature passed the so-called "Robin Hood Bill," which established an "equalized capital outlay and debt service foundation" ("foundation") program. The tax rate local districts were authorized to levy for debt service and capital outlay was again increased by .0004 to a maximum of .0024. Local districts, however, were required to impose a tax rate of .0004 (which would increase in subsequent years, to a maximum of .0010 beginning July 1, 1995), which counted against the .0024 rate and which was to be contributed to the foundation. All of what had been Utah Code Ann. § 53A-16-104 was also renumbered as Utah Code Ann. § 53A-16-104(1)(c). The next year, the Legislature repealed much of the Robin Hood Bill. The new law required local school boards to impose a tax rate of .0001, which would be contributed to the foundation. Section 53A-16-104(1)(c) was amended to provide that local districts could continue to impose a tax for capital outlay and debt service at a maximum rate of .0024, with the required rate of .0001 as a part of that levy. In addition, if a district were imposing the full .0024 tax rate, and 75% of the funds from this source were being used to service debt, the school district was authorized to levy an additional tax at a rate of up to .0001. This was the last amendment to what is now section 53A-16-104(1)(c).

B. The Utah Municipal Bond Act (Utah Code Ann. § 11-14-1, et seq.)

In stark contrast to numerous and varied changes that have occurred since 1951 to the forerunner of the current Utah Code Ann. § 53A-16-104(1)(c), UMBA has undergone very few changes. UMBA was enacted in 1965. (S.B. No. 86, 1965 L. Utah Ch. 41.) The section of UMBA that you requested us to address -- Utah Code Ann. §§ 11-14-19 -- and another important section relevant to this discussion -- Utah Code Ann. § 11-14-20 -- have remained unchanged since UMBA was enacted in 1965. A third section -- Utah Code Ann. § 11-14-1(1) -- which contains the definitions, has also remained basically unchanged since 1965.

Prior to the passage of UMBA, authorization for the State's political subdivisions to issue bonds had been granted in statutes that would authorize the issuance of bonds by only one particular type of political subdivision -- such as, a county, or city, or school district -- and for only the particular purposes spelled out in the statute. Under UMBA, however, for the first time, the authority to issue bonds was granted in one statute to all municipalities, i.e., local governments and political subdivisions. UMBA defined (and still defines) "municipality" as follows: (1) "Municipality", for the purpose of this chapter, includes . . . school districts, . . . (Utah Code Ann. § 11-14-1(1) (1992) (Emphasis added.)

UMBA contains other important provisions for issuing bonds, including the purposes for which municipalities could issue bonds (basically, bonds could only be issued to obtain or develop capital facilities), and the mechanics of meetings to be held and how the election was to be conducted. Additionally, and important to this opinion, UMBA included what became Utah Code Ann. § 11-14-19, which provided that when general obligation bonds were issued under UMBA, there would be a tax levied on all property within the municipality issuing the bonds in such amount and, without limitation, as would be necessary to issue the bonds. UMBA was to be an additional authorization for municipalities, including school districts, to issue bonds. As set forth in Utah Code Ann. § 11-14-20:

. . . This act is intended to afford an alternative method for the issuance of bonds by municipalities and shall not be so construed as to deprive any municipality of the right to issue its bonds under authority of any other statute, but nevertheless this act shall constitute full authority for the issue and sale of bonds by municipalities.

UMBA passed without a dissenting vote in the Senate (1965 Senate Journal p. 623) and in the House of Representatives (1965 House Journal p. 701).

UMBA, then, is truly a self-contained bonding bill: it provided the authorization for municipalities -- including local school districts -- to issue bonds; it described the purposes for which the bonds could be issued; it contained the mechanics that had to be followed; and it set forth both the authorization, and the requirement, to levy taxes at whatever rate was necessary, without limitation, and regardless of any law to the contrary, to service the bonds issued under UMBA.

C. Analysis of Relationship Between Utah Code Ann. § 53A-16-104(1)(c) and UMBA

When UMBA was passed, there was no floor debate addressing the question you have asked. We therefore apply the rules of statutory construction in order to determine what relationship, if any, exists between the tax rates authorized by section 53A-16-104(1)(c) and by UMBA. To do so, it is helpful to compare section 53A-16-104(1)(c) and UMBA in certain areas.

1. Comparison of Utah Code Ann. § 53A-16-104(1)(c) and UMBA

a. Authorization to Issue Debt and Levy Taxes to Service the Debt.

The statute which evolved into what is now section 53A-16-104(1)(c) was enacted to meet an emergency classroom shortage in school districts that had exhausted every lawful means of obtaining money. The State was making available to them additional funds, in part from funds appropriated by the State, and in part by authorizing school districts to levy an additional tax rate of either twelve or ten mills, to be used for debt service and capital outlay.

Today, the current section 53A-16-104(1)(c) clearly authorizes the levying of taxes for debt service and capital outlay. As for the authority to issue bonds, section 53A-16-104(1)(c) does not on its face explicitly authorize school districts to issue bonds. Nor does the statute set forth any of the mechanics of how to issue the bonds.

In contrast, UMBA clearly contains within itself all the authority and directives a school district needs to issue bonds: an authorization to issue bonds; the purposes for which the bonds may be issued; the mechanics for issuing bonds; and the directive to impose a tax levy of whatever rate is necessary to service the bonds. UMBA does not refer to any statutes outside of UMBA for any type of authority or directives. Furthermore, UMBA's provisions make clear that the authorization within UMBA for school districts to issue bonds is in addition to any authority already existing for school districts to issue bonds.

b. Types of Debt That Can Be Serviced.

Utah Code Ann. § 53A-16-104(1)(c), and all of its predecessors since 1951, have clearly authorized local school districts to impose an additional tax rate for "debt service and capital outlay." Just how the proceeds were to be divided between servicing debt and spending for capital facilities has always been left up to the school district imposing the tax. (With rare exceptions, the local school districts have been required to impose the full authorized tax rate in order to be able to receive certain funds made available by the State for capital facilities.)

These statutes have not indicated or limited the type of debt that could be serviced by the authorized tax. Thus the tax revenues authorized by this section could be used to service any kind of debt: general obligation bonds; revenue bonds; lease-revenue bonds; tax anticipation notes; renewable annual leases; certificates of participation. Of course, any or all of the tax could also be expended for capital outlay. The choice is up to the district levying the tax.

On the other hand, the unlimited tax authorized and mandated by UMBA can only be used to service general obligation bonds issued under UMBA.

c. Procedures to Be Followed in Levying the Tax.

The school board itself is authorized, without a vote of the public, to levy a tax under section 53A-16-104(1)(c) at a maximum rate of .0024 of the value of property within the school district. In order to levy the tax under section 53A-16-104(1)(c), the school district must have debt to be serviced or capital outlay to be paid.

In contrast, to incur debt under UMBA, the voters within the geographical district of the issuer must approve the bonds. (Utah Code Ann. § 11-14-2.) In approving the issuance of the bonds, the voters will also be approving the imposition of a tax on all property at a rate necessary to service the bonds. (Utah Code Ann. § 11-14-19.)

2. Applying Rules of Statutory Construction to the Relationship Between Utah Code Ann. § 53A-16-104(1)(c) and UMBA.

When reviewing legislation, the primary responsibility of a court is to construe the legislative enactments to give effect to the Legislature's underlying intent." (Tesco American, Inc. v. Lether, 887 P.2d 860, 862 (Utah Ct. App. 1994); West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982).) Initially therefore, statutes are construed according to their plain language. (Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick (890 P.2d 1017, 1020 (Utah 1995); Brinkerhoff v. Forsyth, 779 P.2d 685, 686 (Utah 1989).)

The language of both section 53A-16-104(1)(c) and UMBA is clear. Neither statute refers to the other. Section 53A-16-104(1)(c) gives a school board the right to impose a levy of .0024 to be used for debt service and capital outlay. The purpose of the entire 44+ year history of this section and its predecessors has been to provide school districts with this option. On the other hand, UMBA gives school districts and other political subdivisions the authorization to issue general obligation bonds (among other kinds of debt) with voter approval, and requires the levying of a tax sufficient to service that debt, without limitation. Neither statute refers to the other. Each statute on its face operates independently of the other.

Only if the court finds an ambiguity will it seek guidance from the legislative history and the purpose of the statute as a whole. (K&T, Inc. v. Koroulis, 888 P.2d 623, 627 (Utah 1994); World Peace Movement of America v. Newspaper Agency Corp., 814 P.2d 253, 259 (Utah 1994).) Assuming, arguendo, that an ambiguity exists, an examination of the legislative history results in the same conclusion. "When a legislature enacts a provision, it has available all the other provisions relating to the same subject matter whether in the same statutes or in a separate act." However, "[t]he critical question concerns how reasonable it is to assume that legislators . . . know the provisions of other acts on the same subject when they consider the meaning of other acts on the same subject when they consider the meaning of the act to be construed." (2B N. Singer, Sutherland Statutory Construction § 51.01 p. 118 (1992).) Thus we need to determine whether the Utah Legislature would have been aware of the authorization for school boards to levy taxes for debt service (and capital outlay) when it enacted UMBA.

When the UMBA was passed in 1965, we must assume that the Legislature knew there was statutory authorization for school districts to levy taxes for debt service in the predecessor to section 53A-16-104(1)(c). Education is always of paramount importance to the Utah Legislature, as are fiscal matters.

Overcrowded classrooms, and what to do about them, have been a constant issue before Utah's Legislature from the end of World War II to the present. The authorization to levy taxes for debt service and capital outlay in the 1951 Act had been re-enacted in 1953, 1955, and 1957. The 1957 Act extended this authority for ten years in a bill whose enacting clause said it was to assist school districts in meeting further emergency needs for remodeling and constructing school buildings. By 1965, when UMBA was passed, the language in what by then had become Utah Code Ann. § 53-7-8.1 had been law for fourteen years.

It is unlikely that the Legislature was unaware of the provisions of UMBA when it passed this law. This was not a small amendment tucked away in a larger bill, but a major change in the State's bonding law. Not only was a self-contained bonding law passed but, for the first time in the State's history, a bonding law was passed that was applicable to almost every type of political subdivision, including school districts. The Legislature was aware that other bonding laws were on the books. (See the remarks of Rep. Kenneth C. Olsen to the Utah House of Representatives, March 9, 1965.) Yet UMBA was enacted independent of, and without reference to, any other statutes. More specifically, the authority to issue bonds and to service those bonds by levying an unlimited tax, was included within UMBA without reference to the authority to levy taxes contained in Utah Code Ann. § 53-7-8.1.

Not only is there nothing in the legislative history at the time UMBA was enacted that links UMBA in any manner with section 53A-16-104(1)(c) but, since the enactment of UMBA in 1965, there has been nothing in the legislative history of any of the predecessors of the current section 53A-16-104(1)(c), or in any of the few amendments that have been made to UMBA, that indicates the Legislature has ever linked the authority to levy the tax authorized by section 53A-16-104(1)(c) to the taxes authorized when bonds are issued under UMBA. Just two years after passing UMBA -- when this major piece of legislation must have been still fresh in most legislators' minds -- the Legislature, in a separate bill, extended the provisions of Utah Code Ann. § 53-7-8.1 for another ten years. Since 1967, there have been numerous and significant changes to what in 1965 was Utah Code Ann. § 53-7-8.1. After the authority to levy the tax in Utah Code Ann. § 53-7-8.1 was extended again for another ten years in 1977, the statute has been amended another nine times, enacting many important changes, including two rather recently. In 1992, the Robin Hood Bill made major changes to a section that before then contained only the language of what is now section 53A-16-104(1)(c), and then in 1993, many of the changes added by the Robin Hood Bill were deleted or amended. These two acts as well as all others amending section 53A-16-104(1)(c) or its predecessors, and the legislative

history of those amendments, are void of any reference to UMBA. There is no suggestion that the authorization to levy a tax under what is now section 53A-16-104(1)(c) would be reduced or in any way affected by any tax levied to service bonds issued under UMBA.

It is our opinion that the Legislature was aware of the authority to levy taxes for debt service and capital outlay in the current section 53A-16-104(1)(c) when the Legislature passed UMBA in 1965, and that the Legislature has been aware of the authority and requirement to levy taxes for bonds issued under UMBA during the many times the Legislature has amended the predecessors to the current section 53A-16-104(1)(c) since 1965. The Legislature has never tied the two together, either by explicit language or by anything said during floor debates on amendments to either law, or in any other manner. Therefore, by inference, the Legislature has never intended that the two laws be read as limiting or restricting or otherwise affecting each other.

In trying to ascertain legislative intent, courts will also examine whether a legislature has demonstrated that it knows how to place language modifying provisions of the statute being interpreted or similar statutes. (*King v. Industrial Comm'n*, 850 P.2d 1281, 1295 (Utah Ct. App. 1993); *Standard Fed. Sav. & Loan Ass'n v. Kirkbride*, 821 P.2d 1136, 1138 (Utah 1991).) With respect to section 53A-16-104(1)(c) and its predecessors, the Legislature has clearly demonstrated that it knows how to modify the authorization to levy taxes within that statute. The original 1951 Act said the tax authorized "may be diminished by deducting therefrom any current legal levies for school building purposes, including levies for debt service." The amendments enacted in 1989 reduced the authorized levy from .0024 to .0020, but then authorized local school boards to increase their .0020 levy by .0004 if certain conditions were found to exist. Finally, the current statute authorizes local school boards to levy taxes of .0023 of the value of the property within the school district for use by the local school district, but if certain conditions are found, the local school district may increase the levy by .0001. Clearly, had the Legislature wanted to limit or otherwise modify the tax levy authorization in section 53A-16-104(1)(c) by reducing that authorization to levy by taxes levied under UMBA, the Legislature had demonstrated it knows how to place words of modification in this statute.

Finally, our opinion is further buttressed by the rule that when construing legislation, courts will not presume that the Legislature indulged in a useless act. (*Marakis v. State Farm Fire & Casualty Co.*, 765 P.2d 882, 886 (Utah 1988).) The 1989 Legislature authorized local school districts to increase their tax levies by .0004 if the State Board of Education found that the .0004 tax rate reduction mandated elsewhere in that bill would not be sufficient to meet the school district's capital outlay and debt service obligations. Somewhat similarly, the 1993 Legislature passed the final amendments that affect the current section 53A-16-104(1)(c): Utah Code Ann. § 53A-16-104(1)(d) was enacted, which provides that if a school district has imposed a .0024 tax rate under Utah Code

Ann. § 53A-16-104, of which section 53A-16-104(1)(c) is a subpart, and more than 75% of the revenues from that tax rate must be used for debt service, then the district may impose an additional tax rate to offset any lost revenue from the .0001 rate required to be imposed under section 53A-16-104(1)(a), which is counted against the .0024 rate authorized by section 53A-16-104(1)(c). Thus both the 1989 and 1993 acts authorized increases in the taxes otherwise permitted under what is now section 53A-16-104(1)(c).

If the additional levy referred to in the 1989 legislation, and that referred to in the current Utah Code Ann. § 53A-16-104(1)(d), were meant to service general obligation debt issued under UMBA, then these provisions in the 1989 and 1993 acts would be useless. These authorizations would not be necessary since, under UMBA, the school districts are not only authorized, but required, to levy whatever tax, without limitation, is necessary to service the debt issued under UMBA. In other words, the authorization in UMBA to levy a tax rate without limitation to service bonds issued under UMBA obviates any need for an additional authorization such as that in Utah Code Ann. § 53A-16-104(1)(d) to increase a tax rate if the current tax rate is insufficient to service debt. The only way to give these provisions of the 1989 and 1993 acts any meaning is to interpret them as referring to servicing debt other than debt issued pursuant to UMBA.

In summary, when we apply the rules of statutory construction that a court would be likely to use to analyze these two statutes, we conclude that the two statutes were set up for different purposes. A tax levied by a school district to service general obligation bonds issued under UMBA does not limit, or otherwise affect, the authorization for a school district to levy a tax under the authority of section 53A-16-104(1)(c).

D. Potential Adverse Effect of Debt Service Authorization Under UMBA on Debt Service Authorization Under Utah Code Ann. § 53A-16-104(1)(c).

The Utah Constitution limits the debt a school district may incur to not more than four per cent of the value of the taxable property within that school district. Utah Const. Art. XIV, Sec. 4. As interpreted by the Utah Supreme Court, this limit applies only to general obligation debt. (*Utah Power & Light Co. v. Ogden City*, 79 P.2d 61 (Utah 1938)). Accordingly, if a school district has issued general obligation bonds under UMBA, and the amount of general obligation bonds outstanding equals (or exceeds) the constitutional debt limitation, the school district will be unable to issue additional general obligation bonds. If such a school district wanted to issue additional general obligation bonds, and to service the debt on those general obligation bonds by using all or part of the .0024 tax rate authorization of section 53A-16-104(1)(c), the district would obviously be unable to do so.

To a certain extent, this caveat merely states the obvious: if no additional general obligation bonds can lawfully be issued, no source of taxes or revenues -- be it those authorized by UMBA, Utah Code Ann. § 53A-16-104(1)(c), Utah Code Ann.

§ 53A-17a-145, or other statutory authority -- could be used to service the debt on the bonds that cannot be issued.

However, since such a situation would limit the levying of the tax otherwise authorized by section 53A-16-104(1)(c), and your question goes to whether the tax rate authorized by section 53A-16-104(1)(c) could ever be limited by the use of the tax rate authorized by UMBA, we make the observation.

V. SUMMARY

Utah Code Ann. § 53A-16-104(1)(c) and the UMBA are both authorizations by which school districts may service debt. Each authorization, however, is independent of the other.

1. Section 53A-16-104(1)(c) allows a school board, without voter approval, to levy a tax rate of up to .0024 of the value of taxable property within the school district.

The amount raised by the tax can be used for capital outlay, debt service, or both.

The debt serviced can be of any type: general obligation bonds; revenue bonds; tax anticipation notes; renewable annual leases; certificates of participation; or other types of debt.

2. UMBA authorizes a school district to issue general obligation bonds, as well as other types of debt. If general obligation bonds are issued, the amount of the bonds that may be issued is also limited by the Utah Constitution, Article XIV, Sec. 4, to no more than four per cent of the value of the taxable property within the district. The tax rate that may be imposed to service that debt, however, is unlimited, i.e., the tax rate must be whatever it will take to service the bonds. In short, the Legislature has enacted at least these two statutes authorizing school districts to levy taxes to service debt. The two statutes may have some overlap as to purpose in that both can only be used to obtain capital facilities but, except as noted, the use of one does not affect the authorization of the district to use the other, and the levying of taxes to pay for debt incurred through use of the authority under the UMBA does not count against any of the .0024 tax rate authorized by Utah Code Ann. § 53A-16-104(1)(c).

Should you have any questions relating to the foregoing, please let us know.

Sincerely,

BRYCE H. PETTEY

Assistant Attorney General

BHP/dr