

CHARLES A. PISATURO, ESQ.
CITY SOLICITOR



VINCENT A. CIANCI, JR.
MAYOR

DEPARTMENT OF LAW

October 31, 1983

IN CITY COUNCIL
NOV 3 1983

The Honorable the Members
of the City Council,

Dear Members:

READ:
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.

Ree M. Mendonca CLERK

RE: PROCEEDS FROM THE SALE OF VALLEY VIEW HOUSING
PROJECT

This letter and opinion is in response to Resolution No. 676 of the City Council (approved 10/14/83), requesting a legal opinion "as to whether or not the moneys received from the sale of the Valley View Housing Project must be used to retire outstanding debts, in accordance with Providence Home Rule Charter of 1980."

The pertinent section of the Charter to be interpreted is Section 808-- "Application of Revenue", which provides in part as follows:

"...All revenue of the City shall be paid into and credited to the General Fund; provided, however, that moneys received by the City from the sale of capital assets shall be deposited in a special fund and used only for payment of the City debt or to finance capital expenditures ..."

Since it is clear that the Valley View Project is a capital asset, it is my opinion that the moneys received from the sale thereof are required to be deposited in a special fund.

The further question remains--What is the meaning of "for the payment of the City debt", in said section, since that is an authorized purpose for which the said special fund can be used. The Charter does not define the word "debt", as used therein. So we must look elsewhere for its meaning.

The Rhode Island Supreme Court has repeatedly ruled that

"Words used in a statute are accorded their plain and ordinary meaning unless a contrary intent appears on the face of statute."

- Roadway Express, Inc. v. R.I. Commission for Human Rights (R.I. 1980), 416 A. 2d. 673;
- State v. Healy (R.I. 1980), 410 A. 2d 432.
- Little v. Conflict of Interest Commission (R.I. 1979), 397 A. 2d 884:

"Statutory terms must be given their plain and ordinary meaning unless a contrary intent is clearly shown on the face of the statute."

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What is the plain and ordinary meaning of "debt"?

Webster's New International Dictionary (1961) at page 583, provides this definition:

"Something that one person is bound to pay to another or perform for his benefit; something owed; obligation",

and it lists the following synonyms: "indebtedness, obligations, liability, debit..."

Black's Law Dictionary at page 490, defines "debt" as:

"A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note."

and further, at page 491, the following quote is made:

"Standing alone, the word 'debt' is as applicable to a sum of money which has been promised at a future day, as to a sum of money now due and payable. To distinguish between the two, it may be said of the former that it is a debt owing, and of the latter that it is a debt due. A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened. People v Arguello, 37 Cal. 524."

In Section 41.18 of McQuillin on Municipal Corporations, the author states:

"When so used in a general or popular sense, it [debt] may be said to be that which is due from one person to another."

The Providence Review Commission has received an opinion on this subject, dated October 19, 1983, from Edwards and Angell.

That opinion relies on the case of Chartier Real Estate Co., Inc. v. Chafee, 101 R.I. 544, 225 A. 2d 766, (1967), for drawing the conclusion that "these cases support the proposition that as used in Article VIII of the Charter, payment of City debt permits payment of existing principal indebtedness; it does not permit payment of debt service charges which would include among other things, future interest not yet accrued."

I do not agree with that conclusion.

That case is clearly distinguishable in that it dealt with the interpretation of Article XXXI of the Rhode Island Constitution, expressly limiting the amount of debts the state could incur without the express consent of the people. Thus, this is part of that special line of cases dealing with Constitutional debt limitation provisions. As to this line of cases, McQuillin on Municipal Corporations, in the said section 41.18 states at page 337:

"It has often been held that the terms [debt and indebtedness] should be given their general meaning and should not receive a narrow or strained construction; but a careful examination of the decisions discloses the fact that in substantially each jurisdiction the word "debt" or "indebtedness", as used in the limit placed upon municipal power is given a meaning much less broad and comprehensive than it bears in general usage." (emphasis added)

As a matter of fact, in the next section, McQuillin refers to the Constitutional debt limitation cases. McQuillin states:

"Constitutional limitations have been held inapplicable to mandatory obligations created by the Constitution or obligations necessary to maintain the existence of the [municipal] corporation. The maintenance of the municipal government is essential to the health, safety and general welfare of the community, and consequently the limitations of indebtedness imposed are not intended to be so far exclusive as to require the suspension of the governmental functions."

The Rhode Island courts have recognized the specialized definition of the word "debt" when used in Constitutional debt limitation provisions.

In Herbert v. Handy, 29 R.I. 543, (1909), the court was called upon to interpret the use of the word "debts" in a statute dealing with the probate of estates. The court stated at page 547:

"The word 'debts' [in the said statute] is evidently being used in its generic and not in its strict legal sense. In other words, the word 'debts' should be understood and taken in its popular meaning, which is synonymous with claims."

The said opinion from Edwards and Angell relies also on the case of Opinion to the Governor, 112 R.I. 139, 308 A. 2d 802 (1973). That, too, was a case dealing with the word "debt within the meaning of the state constitutional debt limitations." (See page 144) and is therefore likewise distinguishable from the case at hand.

I agree with the quote contained in the said opinion from Edwards and Angell from the U.S. Supreme Court in Price v. U.S. 269 U.S. 492, 500 (1926):

"The meaning properly to be attributed to the word [debt] depends upon the connection in which it is used in the particular statute and the purpose to be accomplished."

In my opinion, the word "debt", as used in Section 808 of the Charter, should not be given the specialized technical meaning found in some Constitutional debt limitation cases, but to be accorded its "plain and ordinary meaning", in common usage.

I could find no section or provision in the new Charter which contradicts this conclusion. In fact, this conclusion is supported by a City Ordinance, Section 21-90 of the Code, which provides that

"Receipts in money on account of the sale of real estate... shall be appropriated to the payment or purchase of 'the City debt.'"

It seems to me that the plain and ordinary meaning of the phrase "the City debt", is what the City is legally and definitely obligated to pay as a result of long-term bonds for capital improvements issued under Charter section 807, entitled "Borrowing."

It seems to me inconceivable that the framers of the Charter intended to so severely restrict the Finance Director and the City Council and unreasonably tie their hands by not permitting the payment of that interest which is a definite obligation of the City, often constituting a major portion "of the City debt."

Even the advisory opinion rendered by the Charter Advisory Committee does not restrict these funds in the manner suggested by the Edwards and Angell opinion. The Charter Advisory Committee merely states that the funds:

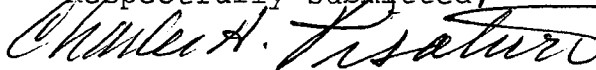
"should be put in a separate fund either to purchase additional capital assets or to retire debt incurred by the purchase of capital assets."

It seems clear that a "debt incurred by the purchase of capital assets" includes the principal and interest, since the interest is also incurred, and if it is not part of the debt--then what is it?

In conclusion then, it is my opinion

- (a) that the said proceeds do have to be deposited in a special fund and should not be mingled with the general treasury;
- (b) that the said special fund may be used
 - (1) to finance capital expenditures authorized by the capital improvement budget, or (2) for the payment of the "City debt", which includes principal and interest, incurred from the sale of long-term bonds for capital improvements--in other words, "for the permanently financed City debt" as the fiscal experts call it.

Respectfully submitted,



CHARLES A. PISATURO,
CITY SOLICITOR

CAP:RAF

cc: Finance Director
Providence Review Commission