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AG Lynch may choose to hold back $200 million tobacco bond sale

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Pawtucket Times

PROVIDENCE — Lobbing a hand grenade in the direction of the intricately constructed and precariously balanced state budget passed last week over the governor's veto, Attorney General Patrick Lynch said he may not sign off on the sale of nearly $200 million in tobacco bonds that comprise the cornerstone of the budget's revenue structure.

Lynch told reporters on the sidewalk outside his office yesterday that he wants some questions answered — although he would not specifically state what his concerns are — before he signs what is essentially a closing document on the bond sale, which he is supposed to do by the end of business today for the bond sale to go through on time.

"Right at this point, I'm not satisfied" that Rhode Island would be safe from a lawsuit brought by the tobacco companies in the original Master Settlement Agreement challenging whether the state is living up to its part of that agreement, he said. If it is not, Rhode Island might have to forfeit some or even all of the money coming to it for any year it is found not to be keeping its end of the bargain.

"There is some language we are working on that is not included at this point that I want included, and if it is not, I will not be signing the document," Lynch declared, declining to disclose what that language is. Lynch said he will announce his decision whether to sign off on the bond sale sometime today.

The tobacco companies are vigorously suing in various states — Rhode Island being one of them — alleging they are losing market share in those states because a states are not enforcing parts of the settlement that, for instance, maintain a level playing field to not let companies that were not part of the agreement gain an unfair advantage, the attorney general said.

"If they sued, 26 states I think they are looking at, if all of those are reviewed and only one state has not diligently enforced (the Master Settlement Agreement) and that state is Rhode Island, there is a multiplier where we can lose up to 100 percent of one year's payment," Lynch said. "Then they can come back the next year and they can sue you again, but now you have already set up not diligently enforcing."

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"The tobacco companies are looking at a run of different states and I believe entirely that their objective is to divide and conquer," Lynch said. "It's not me who says [the state is not diligently enforcing], but they will still go to court and sue us. There is a filing in Superior Court now, there's filings in states across this nation, and it's increasing in frequency and intensity and the money at stake is enormous. So when I watch that landscape, there is a threat to real money coming into this state."

Rhode Island was one of more than 40 states that, back in the 1990s sued the tobacco companies over the unhealthful effects of smoking. That suit resulted in the multi-billion dollar Master Settlement Agreement in which the tobacco companies agreed pay out millions of dollars to each of the states "in perpetuity" — which is as close as the law gets to saying forever — as long as the states maintained certain market standards for tobacco sales.

In 2002, Rhode Island "securitized" or sold off its right to collect that money to bond holders who paid about $600 million up front. That money was used virtually all in one year to address a budget deficit.

This year the state is looking to go out again and sell the rights to the money the state is in line to collect after the first round of bondholders is paid off — money slated to come in between 2025 and 2052, according to Maureen Glynn, the state's health care advocate and a special assistant attorney general.

That would be the $200 million the General Assembly used to fill a deficit in the budget year that starts next Sunday.

Glynn says there are alternatives the state has, such as delaying the closing of the bond sale, now scheduled for tomorrow.

"The government is not going to shut down," if Lynch does not sign off on the bond sale today, she said.

The Carcieri administration declined yesterday, through spokesman Jeff Neal, to respond to the attorney general's concerns or say what the effect would be on the sale of the bonds and the state budget for the coming year if Lynch does not sign off on the bond sale.

"We have heard the same scuttlebutt, that he is not going to sign," Neal said. "Right now, we don't know enough about what the attorney general is doing or how it will affect the budget to have a comment."

Neal did take the opportunity to say, however, that, "Gov. Carcieri has consistently opposed the General Assembly's plan to use this tobacco money to solve the state's budget deficit." Neal said the governor offered an alternative plan that included eliminating 1,000 state jobs, renegotiating health benefits for state employees, freezing wages scheduled to take effect next week and privatizing some state services.

"The General Assembly rejected that plan," Neal said.

A request for a response to Lynch's threat from the House Speaker's office or the House Finance Committee chairman drew no response yesterday.

Carcieri had proposed selling tobacco bonds and using some of the proceeds for transportation projects. The administration projected leveraging about $270 million in federal funds from the $65 million it would invest in the Department of Transportation.