

VOLUME NO. 37

OPINION NO. 158

BONDS - Constitutional and statutory limitations on municipal indebtedness inapplicable to revenue bonds; CITIES AND TOWNS - Constitutional and statutory limitations on municipal indebtedness inapplicable to revenue bonds; MUNICIPALITIES - Constitutional and statutory limitations on municipal indebtedness inapplicable to revenue bonds; REVISED CODES OF MONTANA, 1947 - Sections 11-2303, 11-2408 and 11-2409.

HELD: Revenue bonds issued under the Revenue Bond Act of 1939, whether for municipally owned and operated sewage and water facilities or other permissible purposes, do not create indebtedness within the meaning of section 11-2303, R.C.M. 1947, and are not subject to the debt ceiling established by that section.

31 August 1978

Ben Berg, Jr.  
Bozeman City Attorney  
411 East Main Street  
Bozeman, Montana 59715

Dear Mr. Berg:

You have requested an opinion concerning the following question:

Are revenue bonds subject to the municipal debt limitations prescribed by section 11-2303, R.C.M. 1947, when issued to finance the construction of a municipal sewage filtration plant and the renovation and expansion of municipal water supply facilities?

Your question relates to a proposed revenue bond issue by the city of Bozeman. The bonds would be issued pursuant to the Revenue Bond Act of 1939, sections 11-2401 et seq., R.C.M. 1947, to finance the construction of a federally required filtration plant and the renovation and expansion of Bozeman water supply facilities. Both the projects are or will be municipally owned and operated.

Your specific concern is whether the proposed bonds are municipal "debts" within the meaning of section 11-2303, R.C.M. 1947, and therefore subject to the municipal indebtedness ceiling established by that section. Section 11-2303 provides:

No city or town may issue bonds for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 18% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes. For the purpose of constructing a sewerage system, procuring a water supply, or constructing or acquiring a water system for a city or town which shall own and control the water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the con-

struction of a sewerage system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed 10% over and above the 18% heretofore referred to of the total taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

It is well settled that revenue bonds are exempt from constitutional and statutory limitations upon governmental indebtedness. Cases decided under debt limitation provisions established by the 1889 Montana Constitution and implementing statutes thereunder have uniformly held that revenue bonds do not create indebtedness or liabilities within the meaning of the constitutional and statutory provisions. Fickes v. Missoula County, 155 Mont. 258, 264, 470 P.2d 278 (1970), and cases cited therein. The common characteristic of the revenue bonds considered in those cases was express provision in the enabling acts that the bonds issued thereunder did not obligate the credit or taxing power of the issuing public body. Id. The Revenue Bond Act of 1939 contains such a provision, providing in section 11-2409, R.C.M. 1947, that the undertakings must be self-supporting. In section 11-2408, R.C.M. 1947, no bond holder of any bond issued thereunder "shall ever have the right to compel any exercise of taxing power of the municipality" and any bond issued thereunder "does not constitute a debt of a municipality within the meaning of any constitutional or statutory limitation or provision."

The Revenue Bond Act of 1939 was enacted prior to the 1972 Constitution but sections 11-2408 and 11-2409 have not been repealed. It is my opinion that neither the limitations imposed by the 1972 Montana Constitution upon local government indebtedness nor section 11-2303 require a different result than reached in Fickes and its ancestors.

Section 10, Article VIII, 1972 Montana Constitution requires the Montana Legislature to establish debt ceilings for local government. It is the counterpart of sections 5 and 6, Article XIII, 1889 Montana Constitution. The 1889 provisions were controlling in Fickes, and differ from the 1972 provision in that they directly established fifty-nine percent of the value of taxable property as the debt ceiling

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for counties, cities, towns and school districts. The 1889 provisions were self-executing. Colwell v. City of Great Falls, 117 Mont. 126, 157 P.2d 1013 (1945). The 1972 provision mandates that the Legislature fix debt ceilings for local government but clearly carries forward an intention to limit local governments' ability to create obligations which must be met and paid for by future tax revenues. There is no basis for concluding that the 1972 provision requires any different treatment of revenue bonds than accorded under the 1889 Constitution.

Similarly, there is nothing in the language of section 11-2303 indicating that the Legislature intends to treat revenue bonds as municipal obligations or debts. The section is within the chapter dealing with general obligation bonds; general obligation bonds pledge the credit and taxing power of a municipality and have always been considered debts subject to statutory and constitutional debt ceilings. See Yovetich v. McClintock, 165 Mont. 80, 85, 526 P.2d 999 (1974); Montana-Dakota Utilities Co. v. City of Havre, 109, 164, 172, 94 P.2d 660 (1939). More importantly, interpretation subjecting revenue bonds within the limitations of section 11-2303 would conflict with the express provision of section 11-2408. Statutes must be reconciled and harmonized if possible, Fletcher v. Paige, 124 Mont. 114, 220 P.2d 484 (1950). Section 11-2408 can readily be harmonized with section 11-2303 by defining "municipal indebtedness and obligations" in their traditional sense.

The second sentence of section 11-2303, which is underlined, requires no different conclusion in the case of revenue bonds issued to finance sewage or water systems than revenue bonds issued for other purposes. Sewage and water systems may be financed through revenue bonds, see section 11-2402(a), R.C.M. 1947, or general obligation bonds, see sections 11-966 and 11-2302, R.C.M. 1947. Although the second sentence of section 11-2303 refers to dedication of revenues to payment of the underlying bonds, a characteristic of revenue bonds, that language refers back to a municipal debt. The second sentence does not single out revenue bonds issued for purposes of constructing sewage and water supply systems for different treatment than other revenue bonds, but rather contemplates a hybrid situation where general obligation bonds pledge the revenues of the sewage or water supply system to payment of the issue. Since the pledge creates an expectation that the project will pay its way, subject ultimately to the taxing ability of the municipality to make up any deficiencies, the Legislature provided for a higher debt limitation for these hybrid bonds.

THEREFORE, IT IS MY OPINION:

Revenue bonds issued under the Revenue Bond Act of 1939, whether for municipally owned and operated sewage and water facilities or other permissible purposes, do not create indebtedness within the meaning of section 11-2303, R.C.M. 1947, and are not subject to the debt ceiling established by that section.

Very truly yours,

MIKE GREELY  
Attorney General