

**Highways—Special Improvement Districts—Federal Aid Project.**

Form of proceeding and resolution to obtain benefit of federal aid for highway as a part of a special improvement district.

March 5, 1920.

State Highway Commission,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter submitting copies of Resolutions Nos. 43-A and 45-A in connection with the creation of a Special Improvement District in the town of Glendive, in which you state:

“The object of said Improvement District being to pave certain streets in said town and to secure thereon federal co-operation to the extent of 50% of an 18' strip of pavement. We would like to know if, in your opinion, the resolutions are sufficient to insure the securing of funds to meet the current estimates of the Contractor performing the work contemplated in the Improvement District. It would seem to us, by reading Section 7 of Resolution 43-A, that the City of Glendive expects to

collect the money in eight annual installments; that they have made no provisions for issuing bonds on this collection and, in that way, enabling them to secure the funds in a time sufficient to pay off the Contractor as the work proceeds."

The special improvement district laws of this state applicable to cities and towns are contained in Chap. 89 Sess. Laws 1913, and amendments thereof in Chap. 142 Sess. Laws 1915, and in Chap. 175 Sess. Laws 1919.

By Sec. 25 of said Chap. 89 and amended by Sec. 8 of said Chap. 142, all costs and expenses incurred in the making of improvements within a special improvement district must be paid for by special improvement district bonds or warrants drawn against the special improvement district fund created for the district, the form of the bonds or warrants being prescribed in such section. Said section also requires the council by resolution to fix the denominations of such bonds or warrants, which may be \$100. or multiples or fractions thereof, the rate of interest, which must not exceed 6%, and a time certain for the payment or redemption thereof which must not exceed twenty years from date of issuance.

Section 26 of said Chap. 89 requires the city council, whether provided in the call for proposals, or not, to provide in the contract either that the warrants or bonds shall be delivered to the contractor in installments as the work progresses, or upon the completion of the work, and prohibits delivery of bonds or warrants in any amount in excess of the amount of the work actually done, and requires such bonds or warrants to be taken by the contractor at their face value.

Under these provisions the council should, before any contract is entered into, adopt and pass an ordinance creating a special improvement district fund for the district, providing in such ordinance that all warrants or bonds in payment of the cost of making the improvements in such district should be drawn against such fund, that all money derived from the collection of assessments and taxes assessed and levied against the property within the district to defray the cost of making the improvements, together with penalties and interest thereon, shall be by the city or town treasurer credited to such fund, and that the money in such fund shall be used for the payment of the interest and principal become due on said warrants or bonds, and for no other purpose. The fund should be given, in the ordinance, the same number as the district, in this case being "Special Improvement District No. 1 Fund." The council should also adopt a resolution prescribing the form of the bond or warrant to be issued, using the form prescribed in Sec. 25 of Chap. 89 as amended by Sec. 8 Chap. 142., the form of interest coupon to be attached to the bond or warrant, prescribing the rate of interest, which should be 6% per annum, fixing the date when the interest is to be paid, fix the denominations of the bonds or warrants and the time when the same will be payable, and that they are redeemable at the option of the city council. In fixing the time when the warrants or bonds will become payable, the council must be governed by the term over which the assessments are spread. For instance if the installments are spread over a term of eight years, the resolution should provide that one-eighth

of the total amount which will be issued will be payable on the 1st day of January following the collection of the first installment of the assessments, and one-eighth on the first of January of each year following. If, however, the city or town collects its own taxes, instead of having them collected by the county treasurer, the council may fix any other date which will better suit the convenience of the city, but it has usually been found the best practice to take January 1st as the date of payment.

At the time the council enters into the contract, they should provide in the contract, as required by Sec. 26, whether the bonds and warrants are to be issued in installments as the work progresses, or upon the completion thereof. The usual practice has been to provide for the issuance and delivery in installments as the work progresses, the contract providing that the warrants or bonds will be issued for ninety per cent of the amount of work performed as shown by the certificate of the engineer in charge for the city or town. As the commission probably in its contract provides for the withholding of a certain percentage until the completion of the contract, I should advise that the same percentage be fixed in the city's or town's contract. If the contract provides for the issuance in installments as the work progresses and the contractor agrees to accept such warrants or bonds in lieu of cash, there should be no difficulty in handling the matter.

Again you state that a resolution of intention specifies a specific type of pavement to the exclusion of any other type, while it is the practice of the commission to request bids on various types of pavement in order that there may be competitive bidding and to prevent the possibility of any particular type of construction having the exclusive right to bid, and ask whether it would be legal to award a contract for a type of pavement other than that specified in the resolution of the city in which the work is to be done.

Under Sec. 3 of Chap. 89, Sess. Laws 1913, it was contended that the resolution must definitely and particularly describe some one type of pavement to be used, when the improvements included paving, and to overcome this contention such section was amended by Sec. 2 of Chap. 142 Sess. Laws 1915, which provides that if the improvement is paving the council in describing the general character of the same, may describe several different kinds of paving, while Sec. 8 of Chap. 89 was amended by Sec. 5 of said Chap. 142, provides that the council may call for bids or proposals for several kinds and types of materials for any improvements, reserving the right to select the kind or type of material to be used after the bids or proposals therefor shall have been opened, etc. The usual practice and undoubtedly the better practice is to specify in the resolution several types of paving, invite bids or proposals on each thereof, and when the bids or proposals have been opened and examined, for the council to then determine the type of pavement to be used, and the contractor to whom the contract therefor shall be let, a resolution being adopted specifying the type and the contractor whose bid has been accepted. However, this is not mandatory on the council, but merely optional, and there is nothing whatever to prevent the council selecting the type of pavement in advance, specifying such type in the

resolution, and receiving bids thereon and letting a contract therefor, and such action does not prevent competitive bidding (*Ford v. City of Great Falls*, 46 Mont. 292; 127 Pac. 1004). But if the council does select the type of paving in advance, and specifies but that one type in its resolutions, it is restricted to the use of that type and cannot use any other type, hence it would be useless to call for bids on any other type or types.

With reference to furnishing your commission with a form of resolution to be passed or adopted by a city or town council for the purpose of availing themselves of Federal Aid and to insure payments of the money as it becomes due, I believe that a resolution in the general form used by a Board of County Commissioners would be sufficient, except that there should also be included therein a statement that the portion to be paid by the city or town will be paid in warrants or bonds as the work progresses upon certificates of the engineer in charge of construction.

Respectfully,

S. C. FORD,

Attorney General.