

Opinion No. 53

**Cities and Towns—Bonds Issued for
Sewer Purposes—Special Improvement
Districts—Metropolitan Sanitary
Districts.**

**Held: The city of Polson by the is-
suanee of general obligation**

bonds to provide additional funds for the construction of a sewer, has complied with the requirements of Public Law 255, 81st Congress.

December 29, 1951.

Dr. G. D. Carlyle Thompson
Executive Officer
State Board of Health
State Capitol
Helena, Montana

Dear Dr. Thompson:

You have requested my opinion as to whether the City of Polson has complied with Public Law 255, 81st Congress, 1st Session, by issuing general obligation bonds. You advise me that a special improvement district was created in the City of Polson for the purpose of building a sanitary sewer and in addition the general obligation bonds were issued to furnish funds for the same purpose.

Public Law 255, appropriated \$100,000 for the repair and rehabilitation of the drainage system with the proviso:

"That the said city or the residents in the affected area form a drainage-sanitation district and levy as assessment to provide additional funds to convert the drainage lines into a dual purpose system for drainage and sewer disposal purposes and agree to take title to the system and operate and maintain it in perpetuity."

Your question is directed to the general obligation bonds, as it is assumed that the special improvement district complies with the above quoted portion of the federal law

General obligation bonds issued by a city are initiated by a petition of qualified electors who are taxpayers, Section 11-2306, Revised Codes of Montana, 1947, and voted upon by registered electors who are taxpayers within the city. Section 11-2310, Revised Codes of Montana, 1947. The bonds, when issued, are obligations of the city and the full faith and credit of the city are pledged for the payment of the same. Section 11-2319, Revised Codes of Montana, 1947, provides in part:

"All moneys arising from the sale of such bonds shall be paid to the city or town treasurer and shall be immediately available for the purpose or purposes for which the bonds were issued and for no other purpose."

The ballot submitted at the election for the bonds in question stated the bonds would be issued "for the purpose of obtaining funds for the building and construction of a sewer system, to be used for sanitary and other drainage purposes for and within the city of Polson, Lake County, Montana." The funds are limited in their use to sewer construction. Section 11 of Article XII states in part:

"Taxes shall be levied and collected by general laws and for public purposes only."

The bonds could not be issued nor taxes levied to pay the bonds unless the funds were to be used for a public purpose, the construction of sewers.

Section 11-104, Revised Codes of Montana, 1947, grants general corporate powers to cities including the power to hold and purchase property.

There can be little question that the city of Polson was acting within its powers in issuing the general obligation bonds for the construction of a sewer system which will be the property of the city otherwise Section 11 of Article XII would be violated.

The city of Polson followed the proper procedure to meet its contribution to the project of constructing a drainage-sanitary sewer. Chapter 36 of Title 11, Revised Codes of Montana, 1947, which permits the creation of "Metropolitan Sanitary Districts" is primarily designed for the creation of districts embracing both city property and county property outside the municipal limits. The legal entity established by the creation of a metropolitan sanitary district would not have greater powers or assume any greater responsibility than a city which issues general obligation bonds for sewer purposes.

The provisions of Public Law 255, 81st Congress, 1st Session requires that Polson form a district for sewer purposes to provide additional funds for the sewer and take title to the system and maintain it. The funds are available from the special improvement dis-

tract and the general obligation bonds; title to the system must be in the city as public funds can only be used for public purposes and the obligation to maintain the system is an implied duty of the municipal corporation.

It is, therefore, my opinion that the city of Polson by the issuance of general obligation bonds to provide additional funds for the construction of a sewer, has complied with the requirements of Public Law 255, 81st Congress.

Very truly yours,
ARNOLD H. OLSEN
Attorney General