

VOLUME NO. 38

OPINION NO. 34

MUNICIPAL CORPORATIONS - General obligation bonds, power to pay for assistance;  
MUNICIPAL CORPORATIONS - Source of payments for assistance;  
MUNICIPAL GENERAL OBLIGATION BONDS - Proceedings and negotiations, payment of fees for assistance;  
MONTANA CODE ANNOTATED - Section 7-7-4254(3).

- HELD: 1. Section 7-7-4254(3), MCA, prohibits a municipality from paying a consultant for assistance or advice in any of the matters set forth in Title 7, chapter 7, part 42, of the Montana Code Annotated, relating to the issuance and sale of specific general obligation bonds.
2. Section 7-7-4254(3), MCA, does not prohibit a municipality from paying a consultant for assistance in matters involving the overall financial operation of the municipality, so long as the consultation is not limited to a single bond issuance and sale and does not involve participation in specific bond proceedings.
3. The prohibition in section 7-7-4254(3), MCA, is not limited to payment from the actual bond proceeds, but includes all funds of the municipality.

15 August 1979

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Gentlemen:

You have requested my opinion on the following question:

Whether section 7-7-4254(3), MCA (section 11-2315, R.C.M. 1947), prohibits a municipality from hiring a consultant to aid in the preparation of financial documents and analyses relating to the issuance and sale of general obligation bonds.

Section 7-7-4254(3), MCA, which pertains to municipal general obligation bonds, provides: "No attorneys' fees or brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof." The statute clearly prohibits payment of an attorney or bond consultant for any participa-

tion in specific municipal bond proceedings, whether in the stages preparatory to issuance of the bonds or in the stages involving sale of the bonds after issuance. Therefore, all portions of the process of bond issuance and sale set forth in Title 7, chapter 7, part 42, of the Montana Code Annotated and all matters relating to a specific bond proceeding must be performed by the municipality without the aid of compensated financial advisers.

There are, however, certain functions generally connected with municipal bonds that do not necessarily fall within the proscription of section 7-7-4254(3), MCA. For instance, the preparation of a financial analysis or rating for a municipality may be an ongoing process of importance and applicability to the overall operation of the municipal corporation. As stated earlier, section 7-7-4254(3), MCA, prohibits retained assistance in bond proceedings, preparation, and negotiation for sale; however, it does not appear to prevent a municipality from paying for general financial consultation that may be collaterally beneficial to the marketability of general obligation bonds. It is therefore my opinion that matters involving the overall financial operation and status of a municipality may be undertaken by retained consultants, so long as they are not limited to a single bond issuance and sale or to specific bond proceedings.

You have also asked whether the proscription of section 7-7-4254(3), MCA, is limited to payment of consultants out of the actual bond proceeds--that is, whether payment for the activities enumerated in the statute may legally be made from the general fund of the municipality. Section 7-7-4254(3), MCA, makes no mention of the source of payment and provides no exceptions based on the fund from which the payment is made. It is a flat prohibition of compensated assistance in bond proceedings, preparation, and negotiation for sale.

THEREFORE, IT IS MY OPINION:

1. Section 7-7-4254(3), MCA, prohibits a municipality from paying a consultant for assistance or advice in any of the matters set forth in Title 7, chapter 7, part 42, of the Montana Code Annotated, relating to the issuance and sale of specific general obligation bonds.
2. Section 7-7-4254(3), MCA, does not prohibit a municipality from paying a consultant for assistance in

matters involving the overall financial operation of the municipality, so long as the consultation is not limited to a single bond issuance and sale and does not involve participation in specific bond proceedings.

3. The prohibition in section 7-7-4254(3), MCA, is not limited to payment from the actual bond proceeds, but includes all funds of the municipality.

Very truly yours,

MIKE GREELY  
Attorney General