

CITIES AND TOWNS - Authority to borrow money or issue general obligation bonds for furnishing a swimming pool;  
CITIES AND TOWNS - Lack of authority to borrow money to repair or maintain a swimming pool;  
ELECTIONS - Requirements for furnishing a municipal swimming pool;  
MUNICIPAL GOVERNMENT - Authority to borrow money or issue general obligation bonds for furnishing a swimming pool;  
MUNICIPAL GOVERNMENT - Lack of authority to borrow money to repair or maintain a swimming pool;  
MONTANA CODE ANNOTATED - Sections 7-7-4221, 7-16-4101, 7-16-4103 to 7-16-4105, 7-16-4107;  
MONTANA CONSTITUTION - Article XI, section 4.

- HELD: 1. A city or town must have an election pursuant to section 7-7-4221, MCA, to issue general obligation bonds for the purpose of furnishing a municipal swimming pool. However, an election is not required for the city or town to borrow money for that purpose by means other than issuing general obligation bonds.
2. A city or town may not borrow money for the purpose of maintaining or repairing a municipal swimming pool.

10 July 1986

John T. Flynn  
Townsend City Attorney  
P.O. Box 96  
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Dear Mr. Flynn:

You requested an opinion on the following question:

May a city or town borrow money for the purpose of repairing and furnishing a municipal swimming pool pursuant to section 7-16-4101, MCA, without such a proposal being submitted to a vote of the electors?

Section 7-16-4103, MCA, provides authority to "maintain" and "equip" a swimming pool from funds of the city or town raised for such purposes. The authority to borrow money or issue bonds is provided by section 7-16-4104, MCA, which provides in relevant part:

(1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) ... No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof.

The statute is clear that an election is required for borrowing money on bonds to purchase or improve lands.

Section 7-7-4221, MCA, requires an election for any general obligation bonds (excluding refunding and revenue bonds) issued "for any purpose authorized by law." Statutes relating to the same matter must be read together to give effect to all. Schuman v. Bestrom, 42 St. Rptr. 54, 693 P.2d 536, 538 (1985).

I therefore conclude that an election is required for the city or town to issue general obligation bonds to furnish a municipal swimming pool. However, there is no statutory requirement for an election to borrow money by means other than issuing general obligation bonds.

Your question also concerns the authority of the city to borrow money, without an election, to repair the swimming pool.

Section 7-16-4104, MCA, authorizing the city to incur indebtedness, does not include authority to do so for maintenance or repairs. The word "maintenance" has been held to be synonymous with "repair." Morris v. American Liability & Surety Co., 185 A. 201, 203 (Pa. 1936). However, those words are not synonymous with "equipping" or "furnishing." See Neal v. City of Morrilton, 92 S.W.2d 208, 209 (Ark. 1936); Black's Law Dictionary 631, 804, 1105-06, 1462 (rev. 4th ed.).

It is evident the Legislature intended that maintenance and repair of swimming pools be funded by tax levy (§ 7-16-4105, MCA) or park funds (§ 7-16-4107, MCA).

Finally, in this regard, I am aware that statutes pertaining to municipal authority are to be liberally construed in favor of the municipality. Mont. Const. art. XI, § 4; Tipco v. City of Billings, 197 Mont. 339, 642 P.2d 1074, 1077 (1982). However, the statutes in question are, in my opinion, clear and unambiguous, leaving no room for statutory construction beyond the clear meaning of the language. Furthermore, to construe the city's authority to enable it to borrow money for purposes not included in section 7-16-4104, MCA, would leave that section meaningless. See Hanrahan v. Anderson, 108 Mont. 218, 90 P.2d 494, 500 (1939).

THEREFORE, IT IS MY OPINION:

1. A city or town must have an election pursuant to section 7-7-4221, MCA, to issue general obligation bonds for the purpose of furnishing a municipal swimming pool. However, an election is not required for the city or town to borrow money for that purpose by means other than issuing general obligation bonds.
2. A city or town may not borrow money for the purpose of maintaining or repairing a municipal swimming pool.

Very truly yours,

MIKE GREELY  
Attorney General