

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 120

CITIES AND TOWNS - Authority of cities to issue municipal revenue bonds to be retired by gasoline tax revenues;

CITIES AND TOWNS - Whether debt incurred by city which is to be paid exclusively from gasoline tax revenue is considered part of city's general debt and subject to the limitation of section 7-7-4201, MCA;

MUNICIPAL CORPORATIONS - Authority of cities to issue municipal revenue bonds to be retired by gasoline tax revenues;

REVENUE BONDS - Authority of cities to issue municipal revenue bonds to be retired by gasoline tax revenues;

TAXATION AND REVENUE - Authority of cities to issue municipal revenue bonds to be retired by gasoline tax revenues;

TAXATION AND REVENUE - Whether debt incurred by city which is to be paid exclusively from gasoline tax revenues is considered part of city's general debt and is subject to the limitation of section 7-7-4201, MCA;

MONTANA CODE ANNOTATED - Sections 7-1-114(1)(g), 7-6-4466, 7-7-2203(2), 7-7-4101, 7-7-4101(5), 7-7-4201 to 7-7-4275, 7-7-4401 to 7-7-4435, 7-12-4102(2)(c), 15-70-101, 15-70-101(2);

MONTANA CONSTITUTION - Article XI, section 6;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 14 (1979).

- HELD: 1. A city may not issue municipal revenue bonds which are to be retired by gasoline tax revenues received annually from the state pursuant to sections 7-7-4401 to 4435, MCA.
2. If a city contracts for street construction work to be paid exclusively from gasoline tax revenues to be received from the state, such indebtedness is considered part of the city's general debt limitation under section 7-7-4201, MCA, unless the conditions of some specific exception are otherwise met.

3 November 1988

William A. Schreiber  
Belgrade City Attorney  
P.O. Box 268  
Belgrade MT 59714

Dear Mr. Schreiber:

OPINIONS OF THE ATTORNEY GENERAL

You have requested my opinion concerning these two questions:

1. May a city issue municipal revenue bonds which are to be retired by gasoline tax revenues received annually from the state?
2. If a city contracts for street construction work to be paid exclusively from gasoline tax revenues to be received from the state, is such indebtedness considered part of the city's general debt limitation under section 7-7-4201, MCA?

The City of Belgrade has self-government powers, pursuant to article XI, section 6 of the Montana Constitution and the city's recently-adopted charter. However, section 7-1-114(1)(g), MCA, subjects local governments with self-government powers to state statutes "regulating the budget, finance, or borrowing procedures and powers of local governments." Thus, with respect to the issuance of revenue bonds, local governments with self-government powers have no more powers than local governments with general government powers. 38 Op. Att'y Gen. No. 14 (1979) at 50. Therefore, the City of Belgrade is governed by the Municipal Revenue Bond Act, Tit. 7, ch. 7, pt. 44, MCA.

Municipalities in Montana may sell two types of bonds to finance authorized general projects: general obligation bonds and revenue bonds. §§ 7-7-4101, 7-7-4201 to 4275, 7-7-4401 to 4435, MCA. Cities and towns may finance the construction or improvement of streets through the sale of general obligation bonds. § 7-7-4101(5), MCA. On the other hand, municipal revenue bonds may only finance the construction or maintenance of certain revenue-producing "undertakings" (§§ 7-7-4402(3), 7-7-4404, MCA), and neither street construction nor maintenance is among the authorized undertakings. There is an exception for "other revenue-producing facilities," but the connection between street paving and gasoline tax revenues is not direct enough to render this exception applicable. Cf. Taylor v. Land Clearance for Redevelopment Authority of Kansas City, 586 S.W.2d 331 (Mo. 1979); Kennecot Copper Corp. v. Town of Hurley, 84 N.M. 743, 507 P.2d 1074 (1973); Fickes v. Missoula County, 155 Mont. 258, 470 P.2d 287 (1970). I therefore conclude that cities and towns are prohibited from issuing revenue bonds to finance street construction projects.

OPINIONS OF THE ATTORNEY GENERAL

Looking to the statute mandating the distribution of gasoline tax revenues (§ 15-70-101, MCA), it is clear that these funds may be used by municipalities only for the construction and/or maintenance of streets. § 15-70-101(2), MCA. Although these funds are earmarked for construction and maintenance of city streets, a street project would still not qualify under the Municipal Revenue Bond Act because the streets are not "revenue-producing facilities" within the contemplation of the Act.

Your second question concerns the possibility of a city avoiding the general debt limitation contained in section 7-7-4201, MCA, by dedicating gasoline tax revenues to pay for contracted construction work. Section 7-7-4201, MCA, limits the indebtedness that cities and towns may incur to 28 percent of the taxable value of property subject to taxation. That statute allows for exceptions "as otherwise provided," and such exceptions are found in such statutes as section 7-7-4202, MCA, providing for construction of water and sewer systems, or section 7-7-4403, MCA, providing for construction of revenue-producing facilities financed by the sale of revenue bonds. In addition, special improvement district bonds are not subject to this limitation as Montana courts have long held that special improvement district bonds are not obligations of the city or town. See Stanley v. Jeffries, 86 Mont. 114, 133, 284 P. 134, 139, 70 A.L.R. 166 (1929); Lumberman's Trust Co. v. Town of Ryegate, 61 F.2d 14, 19 (9th Cir. 1932). However, my review of the statutes does not reveal any exception to the general debt limitation for municipal street construction projects, unless such construction is undertaken by a special improvement district. See § 7-12-4102(2)(c), MCA.

You suggest that the date of passage of the general debt limitation (in 1939) may be significant in light of the fact that the gasoline tax distribution legislation was not passed until 1955. However, amendments by implication are not favored in Montana, State of Montana ex rel. Malott v. Board of County Commissioners, 89 Mont. 37, 76, 296 P. 1 (1930), and for at least three reasons amendment by implication is untenable in this case. First, there is no indication that the Legislature intended to modify the general municipal debt limit when it passed the gasoline tax distribution bill. Second, any amendment of the general municipal debt limitation would be a complex procedure which could not be accomplished by implication. Cf. §§ 7-7-4402, 7-7-2203(2), MCA. Finally, the Legislature has demonstrated its belief that the general municipal debt limitation must be explicitly amended, by its treatment

OPINIONS OF THE ATTORNEY GENERAL

of the resort community tax. See § 7-6-4466, MCA, where such an explicit amendment was made.

I conclude that in order to come within an exception to the general municipal debt limitation of section 7-7-4201, MCA, the conditions of some specific exception (SIDs, sewer and water systems, revenue-producing facilities) must be met. Since the city's proposed dedication of gasoline tax revenues for the street construction project does not fall within any such exception, the debt incurred by the city is subject to the debt limitation in section 7-7-4201, MCA.

THEREFORE, IT IS MY OPINION:

1. A city may not issue municipal revenue bonds which are to be retired by gasoline tax revenues received annually from the state pursuant to sections 7-7-4401 to 4435, MCA.
2. If a city contracts for street construction work to be paid exclusively from gasoline tax revenues to be received from the state, such indebtedness is considered part of the city's general debt limitation under section 7-7-4201, MCA, unless the conditions of some specific exception are otherwise met.

Very truly yours,

MIKE GREELY  
Attorney General