

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 78

CITIES AND TOWNS - Requirement of public hearing prior to issuance of industrial development revenue bonds;  
CITIES AND TOWNS - Sale of industrial development bonds for community college construction project;  
COMMUNITY COLLEGES - Authority to enter into loan agreements and lease-purchase contracts;  
COMMUNITY COLLEGES - Election requirements with regard to financing for construction project;  
COUNTIES - Inapplicability of election requirement for issuance of revenue bonds to finance community college construction project;  
ELECTIONS - Inapplicability of election requirement for issuance of revenue bonds to finance community college construction project;  
ELECTIONS - Requirements with regard to financing arrangements by a community college district;  
MUNICIPAL CORPORATIONS - Requirement of public hearing prior to issuance of industrial development revenue bonds;  
MUNICIPAL CORPORATIONS - Sale of industrial development bonds for community college construction project;  
REVENUE BONDS - Issuance by city or county for financing community college construction project;  
MONTANA CODE ANNOTATED - Title 90, chapter 5, part 1; sections 7-7-2205, 7-7-2501, 7-7-4423, 20-6-603, 20-9-451 to 20-9-456, 20-9-453, 20-15-301(2), 20-15-404(6), 90-5-101(8), 90-5-102(1)(c), 90-5-104;  
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 29 (1987), 41 Op. Att'y Gen. No. 72 (1986).

- HELD: 1. The election requirement in section 20-9-453, MCA, does not apply to a county's issuance of revenue bonds to finance a community college district's construction project. 42 Op. Att'y Gen. No. 29 (1987) is modified to the extent it suggests a contrary conclusion.
2. A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues.

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3. A community college district may enter into a promissory note loan agreement with a private lender whereby the district would repay the note from college revenues.
4. A community college district may enter into a lease-purchase contract with a private developer whereby the district would pay the lease from college revenues.
5. An election is not required to be held by the community college district to approve the foregoing arrangements for financing a community college construction project. However, a city is required to hold a public hearing prior to issuing an industrial development revenue bond under Title 90, chapter 5, part 1, MCA. Also, when acquiring or constructing sites or buildings, a community college district is subject to the election requirement in section 20-6-603, MCA.

25 April 1988

Ted O. Lympus  
Flathead County Attorney  
P.O. Box 1516  
Kalispell MT 59903-1516

Dear Mr. Lympus:

You have requested my opinion on the following questions pertaining to the Flathead Valley Community College district:

1. May the community college district (the District) enter into a loan agreement with the City of Kalispell (the City) whereby the City would loan the District the proceeds of an industrial development revenue bond issued under Title 90, chapter 5, part 1, MCA, and which the District would repay from revenues of the District?
2. May the District enter into a promissory note loan agreement with a bank or other private lender whereby the District would repay the note from the District's revenues?

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3. May the District enter into a lease-purchase contract with a private developer for the construction of school buildings pledging the revenues of the district to the payment of the lease?
4. Would the utilization of any of the foregoing financing options require prior approval of the electorate of the District?

You have also requested a clarification of 42 Op. Att'y Gen. No. 29 (1987).

Your questions concern the authority of the District to obtain financing for the purpose of constructing campus facilities. The District is considering various alternatives to obtain such financing. One alternative involves an agreement whereby the City would issue an industrial development revenue bond (ID bond) and loan the proceeds from the bond sale to the District, and the District would repay the loan from college revenues. Another alternative involves a promissory note loan agreement between the District and a bank or other private lender, with the District repaying the loan from college revenues. A third alternative involves a private developer undertaking the construction project and leasing it to the District by means of a lease-purchase agreement, with the District paying the lease with college revenues.

In 42 Op. Att'y Gen. No. 29 (1987), I addressed the same types of proposed agreements between Flathead County and the District and held that such agreements were statutorily authorized. Your request for clarification of that opinion focuses on the statement that section 20-9-451, MCA, requiring an election for bonds issued by a county in connection with a county high school, applies to revenue bonds issued by the county for purposes of financing a construction project for the community college. Section 20-15-404(6), MCA, requires the trustees of a community college district to adhere to the school bond provisions of, *inter alia*, sections 20-9-451 to 456, MCA. Those sections pertain to the issuance of bonds by a county for purposes of a county high school. Therefore, in accordance with section 20-15-404, MCA, the county is governed by those sections when it issues bonds for purposes of a community college district. Section 20-9-451, MCA, provides in pertinent part:

Sections 20-9-452 through 20-9-456 shall be used for the purposes of *indebting a county*

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for county high school facilities ....  
[Emphasis added.]

Section 20-9-453, MCA, provides in part:

Immediately upon the receipt of any bond proposition request from the trustees of the county high school, it shall be the duty of the board of county commissioners to submit such question to the qualified electors of the county .... [Emphasis added.]

Upon reviewing the rules of statutory construction and the statutes pertaining to the issuance of bonds, I conclude that the election requirement in section 20-9-453, MCA, does not apply to the county's issuance of revenue bonds because they do not indebted the county. Although section 20-9-453, MCA, facially applies to any proposed bond issue, it must be read together with section 20-9-451, MCA. See Corwin v. Bieswanger, 126 Mont. 337, 251 P.2d 252, 253 (1953) (statutory construction requires the entire act to be read together to give effect to all provisions therein, if possible). Section 20-9-451, MCA, prescribes the application of the succeeding sections when the county becomes indebted. Clearly, the issuance of general obligation bonds indents the issuing authority. See § 7-7-2205, MCA. However, revenue bonds are not issued on the credit of, and do not indent, the issuing authority. Revenue bonds are limited obligation rather than general obligation bonds; they are payable from a limited source, usually from the revenues earned by the facility for which the bonds were issued. See Lamb & Rappaport, Municipal Bonds at 14-15, 103 (1980).

The issuance of revenue bonds by a county is authorized by section 7-7-2501, MCA. Section 7-7-4423, MCA, provides:

(1) No holder or holders of any bonds issued under this part shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon.

(2) Each bond issued under this part shall recite in substance that:

(a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

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(b) said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision. [Emphasis added.]

Thus, a revenue bond issued by the county does not constitute or create a county debt within the meaning of any statutory limitation or provision. Sections 7-7-4423 and 20-9-451, MCA, must be read together. See Rocky Mountain Elevator Co. v. Bammel, 106 Mont. 407, 81 P.2d 673, 676 (1938) (all pertinent provisions of law relating to one subject must be considered together). I therefore conclude that sections 20-9-451 to 456, MCA, do not apply to the issuance of revenue bonds. Thus, the election requirement in those sections does not apply to the county's issuance of revenue bonds to finance the District's construction project. 42 Op. Att'y Gen. No. 29 (1987) is modified to the extent that it is inconsistent with this opinion.

In your inquiry you do not describe the precise nature of the revenue source that would form the basis of the bondholder's security for the revenue bonds. It appears that the District anticipates pledging by contract specific sources of revenue from the college to secure the bonds. Of course, such a contractual pledge would not constitute a general obligation of the District, but would be an integral part of the limited obligation to the bondholders.

Your first question concerns the authority of the District to borrow money from the City through the sale of an ID bond by the City and repay the loan from college revenues. The District has statutory authority to borrow money for college construction projects and repay the loan from college revenues. § 20-15-301(2), MCA; 42 Op. Att'y Gen. 29 (1987). In issuing ID bonds to finance such projects, the City is governed by Title 90, chapter 5, part 1, MCA, entitled "Industrial Development Projects." Section 90-5-101(8), MCA, includes higher education facilities as an authorized project for issuance of ID bonds. Section 90-5-102(1)(c), MCA, authorizes a city to issue ID bonds and loan the proceeds to others for the purpose of defraying the cost of acquiring or improving a higher education facility. Therefore, this proposed alternative is statutorily authorized. This discussion also answers your question concerning the authority of the District to borrow money from a bank or other private lender. Such authority exists under section 20-15-301, MCA.

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Your next question concerns the authority of the district to enter into a lease-purchase agreement with a private developer. This question was answered in 41 Op. Att'y Gen. No. 72 (1986), which held: "A community college board of trustees has authority to lease and/or lease/purchase property for school purposes."

Your last question concerns the requirement of an election to approve any of the foregoing financing alternatives. There are no statutory requirements for such elections to approve the methods of financing discussed above. However, whenever the City issues revenue bonds under Title 90, chapter 5, part 1, MCA, it is required to hold a public hearing on the proposed project. The City may not issue the bonds unless it appears after the hearing that the project is in the City's public interest. § 90-5-104, MCA. Also, the district is subject to the election requirements in section 20-6-603, MCA, when it builds or acquires buildings and property for the college. See 41 Op. Att'y Gen. No. 72 (1986), which held that the statutes pertaining to school districts' acquisition and sale of property applies to community college districts.

THEREFORE, IT IS MY OPINION:

1. The election requirement in section 20-9-453, MCA, does not apply to a county's issuance of revenue bonds to finance a community college district's construction project. 42 Op. Att'y Gen. No. 29 (1987) is modified to the extent it suggests a contrary conclusion.
2. A community college district may enter into an agreement with a city whereby the city would loan the district the proceeds from the sale of an industrial development revenue bond and the district would repay the loan from college revenues.
3. A community college district may enter into a promissory note loan agreement with a private lender whereby the district would repay the note from college revenues.
4. A community college district may enter into a lease-purchase contract with a private developer whereby the district would pay the lease from college revenues.
5. An election is not required to be held by the community college district to approve the foregoing arrangements for financing a

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community college construction project. However, a city is required to hold a public hearing prior to issuing an industrial development revenue bond under Title 90, chapter 5, part 1, MCA. Also, when acquiring or constructing sites or buildings, a community college district is subject to the election requirement in section 20-6-603, MCA.

Very truly yours,

MIKE GREELY  
Attorney General