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Legal Opinion 2016-024

TO: Mayor John Engen, City Council, Dale Bickell, Leigh Griffing, Scott Paasch, Steve Johnson, Ginny Merriam, Marty Rehbein, Kirstin Hands, John Wilson

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE December 7, 2016

RE: Municipal revenue bond issuance does not require a vote of city electors

FACTS:

Some confusion exists within the public citizenry as to whether or not there will be a vote of the city electorate concerning the issuance of bonds to acquire the Mountain Water Company water system.

ISSUE(S):

Is a city elector vote required to issue municipal revenue bonds?

CONCLUSION(S):

Pursuant to subsection 7-7-4426(2)(a) MCA pertaining to municipal revenue bonds, Montana state law provides that municipal revenue bonds may be issued pursuant to title 7, chapter 7, part 44 MCA by resolution “without an election”.

LEGAL DISCUSSION:

While municipal general obligation bonds must receive city electorate voter approval in order for municipal general obligation bonds to be issued, municipal revenue bonds may be issued by a municipality without an election of approval by the city electorate.

Section 7-7-4221 MCA provides for a city elector vote of approval in order for a municipality to issue municipal general obligation bonds pledging the general credit of the municipality. Section 7-7-4221 MCA provides:

7-7-4221. Election on question of incurring indebtedness -- exception. (1) Except as provided in subsection (2) and 15-1-402, whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state.

Revenue bonds relate to municipal undertakings that are self-supporting. Pursuant to subsection 7-7-4426(2)(a) MCA, Montana municipal government state law provides that municipal revenue bonds may be issued without a city elector election approving the issuance of revenue bonds. Section 7-7-4426 MCA provides:

7-7-4426. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

- (a) without an election; or
- (b) when authorized by a majority of the qualified electors voting upon the question at an election conducted in accordance with Title 13, chapter 1, part 4. (*emphasis added*)

Municipal revenue bonds relate to municipal undertakings that are self-supporting. Section 7-7-4424 MCA provides:

7-7-4424. Undertakings to be self-supporting. (1) (a) Except as provided in subsections (1)(b) and (1)(c), the governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting.

(b) The property taxes specifically authorized to be levied for the general purpose served by an undertaking or resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509 constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(c) Revenue from assessments and fees enacted by local ordinance constitutes revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:

- (a) pay when due all bonds and interest on the bonds for the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and
- (b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

Section 7-7-4425 MCA identifies the uses to which revenues from a municipal revenue bond undertaking may be utilized. Section 7-7-4425 MCA provides:

7-7-4425. Use of revenue from undertaking. (1) Any municipality issuing bonds pursuant to this part for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking shall have the right to appropriate, apply, or extend the revenue of such undertaking for the following purposes:

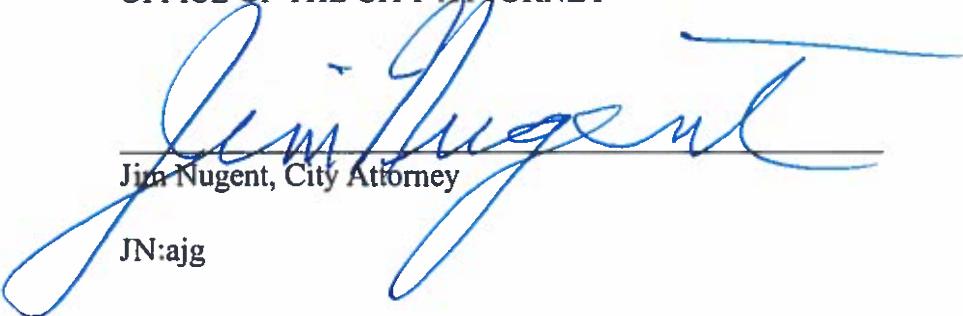
- (a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;
- (b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor;
- (c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part, for the payment of which the revenue of such undertaking is or shall have been pledged, charged, or encumbered;
- (d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of such undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of such undertaking; and
- (e) to provide a reserve for betterments to such undertaking.

(2) Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general fund.

CONCLUSION(S):

Pursuant to subsection 7-7-4426(2)(a) MCA pertaining to municipal revenue bonds, Montana state law provides that municipal revenue bonds may be issued pursuant to title 7, chapter 7, part 44 MCA by resolution "without an election".

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Jim Nugent, City Attorney

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