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Myles P. Tallmadge

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Municipal Bonds

By MYLES P. TALLMADGE, of The Denver Bar

THE New York Bond Buyer reports that municipal and state bonds issued in the United States during the year 1926 amounted to the sum of \$1,351,615,301.00. These figures are of the reported issues. As there are many not reported, it is safe to say that the total amount of state and municipal bonds issued in this country in the year 1926 amounted to approximately one and one-half billion dollars. The necessity of municipal bonds is well known. Municipalities wishing permanent improvements of various kinds and not caring to impose the cost in one levy on taxable property, issue bonds payable over a period of years, at least during the anticipated life of the improvement.

In an article of this kind, necessarily restricted in length, it is only possible to touch on some of the high points of the law of municipal bonds. Also, as the practice of the law on this subject is somewhat specialized, it has been considered advisable to refer to fundamental and general propositions rather than to treat of particular or special ones. Accordingly, for the present purposes, municipal corporations will be considered as counties, cities, towns and school districts, even though counties and school districts are not strictly speaking within the classification.

A municipal bond is merely a promise to pay a certain amount of money at a definite time and place, with interest at a specified rate payable during the period, usually evidenced by coupons attached to the bond. The bond is executed in the name of the municipality, by officers ordinarily mentioned in the statute authorizing the issue, and the bond must bear the seal of the issuing corporation. For the purposes of this article municipal bonds may be group-

ed as general, special and revenue. A general bond is one payable from ad valorem tax levies on property within the issuing municipality. A water or sewer bond of a city, a county court house bond or a school district building bond are examples of those classed as generals. A special bond is one payable from the proceeds of a special assessment, based upon benefits, levied against property in a particular district or locality for improvement, which theoretically enhances the value of the property therein, to an amount at least equal to the assessment. A paving bond payable out of special assessments is a typical example of this class of bond. Irrigation and drainage district bonds are considered special obligations, with some modifications. The important difference between a general and special bond is one of security. When a special assessment against a property is paid, such property cannot be assessed again for the same improvement, even though there be a deficit in the improvement fund, whereas if the deficit occurs in a general improvement the same property may be taxed over and over again for one improvement.

The revenue bond is not so well known. It is payable solely out of the revenue produced from the operation of a public utility, and municipal credit is not pledged except to maintain rates or charges which will be sufficient to pay principal and interest of the debt incurred. An example of a bond of this character is one payable from electric light revenue. Many municipalities have been able to acquire valuable electric utilities by means of this method of financing, without encroaching on their debt contracting power. Bonds of this kind were recently under consideration by

the municipal authorities of Denver in connection with the proposed Two Forks Reservoir. The plan was to finance a hydro-electric improvement by means of obligations payable solely out of revenue and it was proposed to pay not only the particular obligations, but also to pay Denver's entire water debt from the revenue produced, all at rates lower than the present ones.

Each class of bonds has a law unto itself. In this article the law applicable to general obligations only will be briefly treated. It is elementary that municipalities have powers which are expressly granted, those which are necessarily implied and those which are necessary for municipalities to maintain their existence. It has been uniformly held that the power to issue bonds must be specifically given. Therefore, before a municipality can issue bonds for a particular purpose, there must be statutory authority authorizing such an issue.

As important as the grant of power are limitations, statutory and constitutional. In all bond statutes there are restrictions upon the power granted. The most common restriction is upon the total amount of bonds which may be issued for any purpose. The limit is usually placed on a certain per cent. of the assessed value of the taxable property in the municipality, though sometimes the maximum amount of bonds for a certain purpose is set forth. Also issues are limited by tax levies, which may be made to pay principal and interest. Other limitations relate to the procedure to be followed, and the type of bond which may be delivered. Ordinarily the statute prescribes the maturity and optional dates, the maximum rate of interest, denominations and places of payment. Naturally, all mandatory provisions of the statute must be substantially followed and limitations must not be exceeded.

Constitutional limitations consist

mainly in limiting the amount of bonds which can be authorized and in requiring elections of the voters, possessing general or tax-paying qualifications. A typical example is found in Section 8, Article XI of the Colorado Constitution, to the effect that cities and towns cannot incur indebtedness exceeding three per cent. of the assessed valuation of the taxable property therein, except for supplying water, and only when the debt is authorized by the tax-paying electors voting at a general municipal election, and when proper provision has been made by ordinance for tax levies to pay the debt. In this connection it is to be observed that in practically all of the western states which are arid or semi-arid there either is no limit on indebtedness for supplying water or the limit is high enough to permit large expenditures for water and waterworks. In some states, Nebraska for instance, there are no constitutional limitations on municipal indebtedness, the theory being no doubt that all restrictions should be imposed by the legislature which is presumed to have knowledge of municipal demands and how they should be curtailed.

There being statutory authority for the issuance of bonds, the prescribed procedure must be substantially followed. Sometimes it is required that the issue be initiated by a petition, but more often the governing body starts the proceedings by the adoption of an ordinance or a resolution. When an election is necessary, notice must be published or posted, or both, judges and clerks must be appointed and other incidental arrangements made. The vote is canvassed and the result declared. Then, if bonds are voted, comes the adoption of another ordinance or resolution authorizing the issuance of the bonds, prescribing the bond form and providing for the levy of taxes to pay principal and interest when due. Many statutes require that notice of the sale

of bonds be given and that the sale be made to the highest responsible bidder at not less than par. Such requirements must be followed in the same manner as all others.

In prescribing the form of bond to be issued, it is customary to recite that all conditions precedent have been fully complied with, that all requirements of law have been completely fulfilled and that the debt evidenced by the bond does not exceed any constitutional or statutory limitation. The subject of recitals in bonds is one concerning which there are many decisions. It is interesting to know that at an early date the law on the subject was fairly well established by the Supreme Court of the United States in cases concerning bonds of Colorado counties. A consideration of the law of recitals is not within the scope of this article. Suffice it to say in a general

way that if there be statutory authority for the issuance of bonds, if the bonds are executed and delivered by proper officers and if they contain the proper recitals, they are binding on the municipality which purports to issue them, and the municipality is estopped to deny the truth of the recitals as against a bona fide purchaser.

Attorneys engaged in general practice are seldom called upon to examine transcripts or records of bond proceedings, but they are frequently consulted concerning investments of various kinds. Therefore, it is incumbent upon them to know, at least in a general way, the differences between the kinds of bonds, how the same are secured, and the relative merits or disadvantages of each, so that in this day of wildcat speculators and promoters they may give their clients the sound advice to which they are entitled.

Something to Consider

CONCERNING the attitude of the public at large toward violations of certain municipal ordinances, it should be interesting to members of the Bar to consider the following facts.

At the past jury term in our County Court there were approximately thirty cases of traffic law violations appealed from the Police Court. All of these when appealed carried sentences of heavy fines and jail sentences imposed in Police Court. In none of these cases was anyone injured and the following is a good example of them all.

John Doe, a young workman born and raised in Denver, of excellent reputation and with a wife and three small children, leaves a party one night about midnight to go to his home. He has had a few drinks and while driving to his residence collides with a street sweeper, turning his au-

tomobile around. No one is injured. An officer standing nearby investigates the accident and determining Doe has been drinking arrests him. In Police Court Doe is fined \$200.00 and sentenced to jail for 60 days.

It should be remembered that in appealed cases involving the breaking of a municipal ordinance, except for vagrancy, the jury determines whether the person accused is guilty or not and also determines on the sentence to be imposed.

When the above mentioned case was heard in the County Court, Doe was fined \$50.00. In only one of the cases appealed was a jail sentence imposed and the Judge remitted that. In none of the cases was a heavy fine imposed when compared with the disposition of the case in Police Court.

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