

Date Issued: April 20, 1983 (AGO 83-16)

Requested by: Glenn Dill, Kenmare City Attorney

- QUESTION PRESENTED -

Whether chapter 40-35 of the North Dakota Century Code requires an election to authorize the issuance and amount of revenue bonds to finance the construction of a sewage lagoon.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that chapter 40-35, N.D.C.C., does not require an election to authorize the issuance and amount of revenue bonds to finance the construction of a sewage lagoon.

- ANALYSIS -

Under chapter 40-35, N.D.C.C., a municipality has the power to issue revenue bonds to finance undertakings specified by section 40-35-01, N.D.C.C. To exercise this power, a governing body of a municipality authorizes the undertaking and issuance of the revenue bonds by resolution after appropriate notice. See section 40-35-04, N.D.C.C. section 40-35-04, N.D.C.C., states in part as follows:

40-35-04. RESOLUTION AUTHORIZING UNDERTAKING AND THE ISSUANCE OF REVENUE BONDS . . . . The amount of such bonds so authorized, however, shall not exceed the amount authorized by the electors of the municipality as provided in this chapter. . . .

Sections 40-35-06 and 40-35-07, N.D.C.C., are the only provisions in chapter 40-35, N.D.C.C., which address the necessity of an election and election procedures. Under these sections, an election is required only if the proposed revenue bonds are to be issued "for the purpose of financing the construction of a new electric light and power plant or distribution system, or for the construction of extensions to any electric light and power plant or distribution system in excess of twenty percent of the book value thereof as shown in its books . . ." No other provision of chapter 40-35, N.D.C.C., requires an election before the governing body of a municipality may by resolution authorize the issuance and amount of revenue bonds to finance other permissible undertakings specified by section 40-35-01, N.D.C.C., including the construction of the sewage lagoon.

Therefore, it is my opinion that chapter 40-35, N.D.C.C., does not require an election to authorize the issuance and amount of revenue bonds to finance the construction of a sewage lagoon.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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