

OPINION
56-19

July 11, 1956 (OPINION)

CITIES

RE: Assessed Values - Debt Limit

We have received your letter of July 7, 1956, with reference to debt limitations of cities in this state.

Your problem arises under the following set of facts: Your city now has an indebtedness of some \$55,000.00 which represents approximately four percent of your city's total assessed valuation and is a part of a bond issue floated a number of years ago to pay for the construction of a sewage disposal plant.

Your question then is whether your city may now issue bonds for the construction of a new armory in the amount of eight percent of the assessed valuations in your city and still be within the Constitutional debt limit.

Section 183 of our state Constitution provides that a debt of any city shall never exceed five percent of the assessed value of the property therein but any city by a two-thirds vote may increase such indebtedness by another three percent. It is further provided that a city may incur an indebtedness not to exceed four percent of its assessed value for the exclusive purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of the city or for the purpose of constructing sewers and for no other purpose whatsoever. This power is also spelled out in section 21-0304(3) of the 1943 code.

Our courts do not seem to have passed on this question but the supreme court of South Dakota held, in Price et al v. City of Watertown, et al, 281 N.W. 116, that outstanding water, sewerage and lighting indebtedness of a city was not required to be taken into account in determining whether a city could issue bonds for constructing and equipping an auditorium. The court said further that the order in which the indebtedness is incurred is unimportant. The court then cites a number of authorities in support of its position.

It is interesting to note that the language of the South Dakota Constitution and statutes on the subject is similar to ours.

It is our opinion that if your outstanding indebtedness for the sewage disposal plant does not exceed four percent of the assessed valuation of property in your city that you can proceed to issue bonds in the amount of five percent of your assessed values and an additional three percent if authorized by two-thirds of the voters at an election held for that purpose.

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