

**OPINION
59-207**

February 13, 1959 (OPINION)

MUNICIPAL GOVERNMENT

RE: Revenue Bond Law - Liability of Municipality for Bonds

This is in reply to your request for an opinion on the following question: If a municipality were to undertake the processing, refining, or milling of uranium bearing lignite in plants or mills owned by the city under the proposed amendment set out below, would the revenue raising bonds issued by the municipality to accomplish this constitute a general obligation of a municipality? The proposed amendment is as follows:

6. The processing, refining, or milling of uranium bearing lignite in plants or mills owned by, but not operated by, the municipality."

This amendment would become subsection 6 of section 40-3502 which is part of chapter 40-35 of the 1943 Revised Code. Chapter 40-35 relates to revenue bonds issued by a municipality in connection with certain undertakings. This chapter also sets out the purposes for which the bonds may be issued, how they may be issued, and the effect they will have on the municipality debt and etc.

Section 40-3514 of the 1943 Revised Code to a great extent is controlling and is as follows:

Revenue bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the municipality. Such bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the municipality. Each bond issued under this chapter shall recite in substance that the bond, including interest thereof, and that the bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation."

Also the last paragraph of section 40-3513 of the 1957 Supplement substantially provides that the municipalities shall not do anything under chapter 40-35 which would constitute a debt or indebtedness.

The North Dakota Supreme Court commenting on the section quoted above in 76 N.D. 422 on page 445 said,

It is difficult to understand how language could have been employed that more clearly would have indicated a purpose and intention that the revenue bonds should not constitute a debt

or general obligation on the part of the city than that which was used in the Revenue Bond Law. The provisions of the Revenue Bond Law, of the ordinance, and of the proposed bonds themselves make it clear there is no obligation or liability directly, indirectly, or contingently on the part of the principal or interest on such revenue bonds out of its general fund or out of any other fund should the special fund prove to be insufficient. According to the plain terms of the statute, and of the ordinance under which the bonds are authorized and will be issued, such bonds are payable as to both principal and interest solely out of the special fund to be established and maintained out of the earnings derived from the operation of the municipal water and sewer utility. The bonds are not secured by mortgage or lien upon any property of the city. The bonds may not be made a charge upon the property of the city or the taxpayers of the city. They are payable solely from income resulting from the operation of the particular property owned by the city and which is to be repaired, improved, and enlarged by use of the proceeds of the revenue bonds so as to more efficiently serve the purpose for which the property has been acquired, constructed and maintained by the city. For their recompense the bondholders must look alone to the fund into which the earnings are placed and out of which it is agreed the bonds are to be paid."

A similar question also came up in 57 N.D. 75. In this case as well as the one cited above the language of the court clearly indicates that the revenue bonds raised under chapter 40-35 do not constitute an obligation or liability directly or indirectly, or contingently on the part of the city or its general fund. From this is also observed that the bonds would not create an indebtedness against the city. It is also noted that the court in both of the above mentioned cases concluded that the bonds are not general obligations and that they do not create an indebtedness within the constitutional provision of section 183.

It is therefore our opinion that if the municipality issued bonds under chapter 40-35 that such bonds would not constitute a general obligation of the city or be considered an indebtedness or debt of the city. The bonds are to be paid or redeemed solely from the revenue produced from the project undertaken by the city.

LESLIE R. BURGUM

Attorney General