

OFFICIAL OPINION NO. 79-41, Township's authority to contract for long-term payment of funds for special equipment purchases

November 2, 1979

Mr. Richard Bogue
State's Attorney
Lincoln County Courthouse
Canton, South Dakota 57013

Official Opinion No. 79-41

Township's authority to contract for long-term payment of funds for special equipment purchases

Dear Mr. Bogue:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

A township wishes to purchase a road maintainer, the cost of which they do not have in their general fund. The township therefore wishes to borrow three fourths to 80 percent of the total cost of the township purchase of the maintainer and to finance it over a period of 10 years with equal payments and interest at maximum rates allowable.

Based on these facts you have asked the following question:

QUESTION:

May the township enter into an arrangement with a financial institution, such as a bank or lending institution, to borrow money at the maximum allowable interest rate over a period of 10 years, purchase a road maintainer and then issue warrants to the bank for the payment of each specific payment for the next 10 years?

Townships are governmental bodies organized under state law and are only vested with the powers conferred expressly upon them by statute or are necessary to the exercise of enumerated powers. *Aldrich v. Collins*, 52 N.W. 854 (S.D. 1892); SDCL 8-2-10. In this situation it would appear the only expressly authorized procedure for raising such funds would be the issuance of bonds by the township pursuant to SDCL 8-11.

Your facts do not indicate if the voters of the township have approved such an arrangement, or whether the action is being considered by the officers of the township. The statutes on this matter clearly indicate that such a debt may only be incurred with the approval of a majority of the voters in the township. SDCL 8-9-3 specifically applies to these facts; it reads:

No township board of supervisors shall enter into any contract for the purchase of any road grader or any other machine or tool whatsoever, the purchase price of which exceeds one hundred dollars, without submitting the same to, and securing the approval of, the electors of such township in the manner provided by law for submitting questions to such electors.

Even more limiting are the provisions of SDCL 8-10-8 requiring approval of a majority of all the voters in the township:

No township has power to contract debts or make expenditures for any one year in excess of the amount of taxes assessed for such year, without having been authorized by a majority of the voters of such township.

Any contract entered into by the officers of the township without approval by these methods is void. *F. C. Austin Mfg. Co. v. Twin Brooks TP.*, 91 N.W. 470 (S.D. 1902); *Van Antwerp v. Dell Rapids Township* (S.D. 1892), rehearing 59 N.W. 209 (S.D. 1894).

Even with the approval of the voters in the township, the indebtedness is limited by section 4 of article XIII of the South Dakota Constitution, which reads:

The debt of any county, city, town or civil township shall never exceed five per centum upon the assessed valuation of the taxable property therein, for the year preceding that in which said indebtedness is incurred. . . .

Provided, that any county, municipal corporation, civil township, district, or other subdivision may incur an additional indebtedness, not exceeding ten per centum upon the assessed valuation of the taxable property therein, for the year preceding that in which said indebtedness is incurred, for the purpose of providing water and sewerage, for irrigation, domestic uses, sewerage and other purposes; and . . .

. . . no such debt shall ever be incurred for any of the purposes in this section provided, unless authorized by a vote in favor thereof by a majority of the electors of such county, municipal corporation, civil township, district or subdivision incurring the same.

and SDCL 8-10-7:

It shall be unlawful for the officers of any civil township, unless specially and expressly authorized by law, to contract any debt or incur any pecuniary liability for the payment of either the principal or interest for which, during the current year or any subsequent year, it will be necessary to levy on the taxable property of such township, a higher rate of tax than the maximum rate prescribed by law; and every contract made in contravention of the provisions of this section shall be null and void in regard to any obligation imposed on the corporation on behalf of which such contract purports to be made; but every such officer, who makes or participates in making or authorizes the making of any such contract, shall be held individually liable for its performance; and every such officer present when any such unlawful contract was made or authorized to be made, shall be deemed to have made or to have participated in making, or to have authorized the making of the same, as the case may be, unless he dissented therefrom and entered or caused to be entered such dissent on the records of such township.

Under this statute the governmental body may only anticipate the levy to be made in the next or subsequent year only. *Forsting v. Hoilien*, 274 N.W. 654 (S.D. 1937); 1951 A.G.R. 66; 1967 A.G.R. 207. Therefore, unless the contract can be paid off by funds received from the maximum mill levy made during the current fiscal year and the next year, it is illegal and unenforceable against the township. *Forsting, supra* at 657.

Accordingly, any such purchase must be made with funds received in a two-year period or by the bonding procedure set forth in SDCL 8-11.

All other methods are excluded. 1947 A.G.R. 66; 1951 A.G.R. 201; 1967 A.G.R. 207. Under the facts presented the only feasible method for this purchase would appear to be a bond issue. It should be noted that the requirements for such bond issue must strictly comply with the requirements of SDCL 8-11.

Respectfully submitted,

Mark V. Meierhenry
Attorney General

MVM:DRH:esp