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AN OUTLINE OF MUNICIPAL BOND PROCEDURE IN MINNESOTA

By Charles B. Howard*

THE purpose of this article is to outline the requirements for issuance of valid bonds by a Minnesota municipal corporation, and to call attention to certain common defects and mistakes. It is hoped that such an article may have value to attorneys assisting municipal officers in preparing proceedings. Because of this limited purpose, the political or economic wisdom or expediency of the existing laws is outside the scope of this article. This comment also applies to such presently debated measures as over-all tax limitations, stricter debt limitations, and measures designed to invest some independent board or tribunal with power to veto proposed bond issues. Only such changes as may result in better procedural methods along the lines now followed will be discussed.

KINDS AND CLASSES OF MUNICIPAL CORPORATIONS

An attempt to summarize the laws of Minnesota regulating the issuance of bonds by all municipal corporations is a somewhat formidable task, due to diversity of kinds and classes.¹ There are four kinds of municipal corporations in this state having bond issuing powers: counties, incorporated townships or towns, school districts, and municipal corporations proper, including cities and villages, and the one borough. The first two groups have not been divided into general classes, although the growing tendency

*Of the Minneapolis bar. Associated with the firm of Junell, Driscoll, Fletcher, Dorsey & Barker.

¹The term "municipal corporation" is used in the broad sense to include municipal quasi-corporations. *Mason's 1927 Minn. Stat., sec. 1934; Dowlan v. County of Sibley, (1887) 36 Minn. 430, 31 N. W. 517. See Kneier, The Legal Nature and Status of the American County, (1930) 14 MINNESOTA LAW REVIEW 141.*

on the part of the legislature to legislate separately for each county by means of distinctions as to population, area, and indebtedness has made it somewhat unsafe to assume that a particular law applies to all counties.² School districts are divided into three general classes, namely, common, independent, and special districts, the latter being those school districts still organized under a special law.³ Two other classes are named in the statute, "joint" and "consolidated," but no separate powers are enumerated and it is impossible to find any distinction between them and the other classes in so far as bond issuing procedure is concerned. Cities are divided by the constitution into four population classes.⁴ Villages form a fifth class. In addition, there is literally a separate law for each home rule charter city and for the numerous cities and villages incorporated under special laws, and almost as literally a separate law for the remaining cities and villages which are incorporated under general laws.⁵

CODE PROVISIONS

There are no hampering constitutional restrictions upon the power to issue municipal bonds.⁶ The legislature has full control over the subject, and through the efforts of the 1905 code revisors has provided in chapter 10 of Mason's 1927 Minnesota Statutes, at least the foundation of a workable code of procedure covering the issuance of municipal bonds.⁷ This code has been amended at nearly every subsequent session of the legislature. Most of these amendments have been made for some special purpose and have

²See Anderson, *The Need for Constitutional Revision in Minnesota*, (1927) 11 *MINNESOTA LAW REVIEW* 189, 206. Dawley, *Special Legislation in Minnesota*, (1933) 16 *MINNESOTA LAW REVIEW* 659.

³Mason's 1927 Minn. Stat., sec. 2742. In a common school district, the management of the district's affairs is in the hands of the voters, instead of in the hands of the board of education, as in independent districts. *State v. Babcock*, (1902) 87 Minn. 234, 91 N. W. 842.

⁴Minn. Constitution, art. 4, sec. 36.

⁵Anderson, *Municipal Home Rule in Minnesota*, (1923) 7 *MINNESOTA LAW REVIEW* 306. See the *Minnesota Year Book*, 1935, for a list of the various cities and villages and the laws under which they are organized.

⁶*Wall v. County of St. Louis*, (1908) 105 Minn. 403, 117 N. W. 611. The only constitutional restriction on municipal debt is in article 9, sections 4 and 5, which limit the amount of bonds which may be issued to aid in the construction or equipment of railroads. There is no longer any grant of power to issue bonds for such purposes. *Minneapolis, etc., Electric Traction Co. v. City of Minneapolis*, (1914) 124 Minn. 351, 145 N. W. 609, 50 L. R. A. (N.S.) 143.

⁷Chapter 10 was a new enactment combining former separate laws covering bond procedure for various classes of municipalities. See revisor's notes.

not improved the code.⁸ The one notable exception is chapter 131, Laws of 1927.⁹ This act was a well thought out program of reform in municipal bond procedure. It suffers, however, from the important defect that it did not contain any express repeal of existing statutes. Instead, the act has the wholly negative language repealing acts "inconsistent with the provisions of the act."¹⁰ The compiler of Mason's Minnesota Statutes, unwilling to determine what laws had been repealed, has inserted in chapter 10 both the new section and the old section, which clearly relate to the identical subject. Consequently an attorney unfamiliar with bond proceedings is faced with an apparent choice of two sets of definitions,¹¹ two debt limitations,¹² two election majorities,¹³ two requirements as to maturities,¹⁴ and two provisions as to methods of levying taxes.¹⁵ The failure to recognize the fact that the 1927 law is the later enactment covering the same field has been an important cause of defective proceedings.

In addition to the general bond code, there are a number of special bond laws which are more or less complete acts. Mason's 1927 Minnesota Statutes includes two of these laws in chapter 10, namely, chapter 331, Laws of 1927,¹⁶ relating to refunding bonds, and chapter 122, Laws of 1907,¹⁷ providing a special procedure for issuing and selling bonds to the State Board of Investment. Other more or less complete bond laws set out in Mason's Statutes are chapter 334, Laws of 1905,¹⁸ and chapter 43, Laws of 1909¹⁹ relating to waterworks and light plant bonds, and chapter 85,

⁸See comment of Judge Lees in *Hill v. Village of Aurora*, (1924) 157 Minn. 469, 473, 196 N. W. 495.

⁹Mason's 1927 Minn. Stat., sec. 1938-3 et seq.

¹⁰Mason's 1927 Minn. Stat., sec. 1938-13. This clause is a limitation on implied repeal, rather than an extension thereof. *Gaston v. Merriam*, (1885) 33 Minn. 271, 282, 22 N. W. 614; *Phelps v. City of Minneapolis*, (1928) 174 Minn. 509, 219 N. W. 872.

¹¹Mason's 1927 Minn. Stat., secs. 1935 and 1938-3.

¹²Mason's 1927 Minn. Stat., secs. 1938 and 1938-4.

¹³Mason's 1927 Minn. Stat., secs. 1941 and 1938-6.

¹⁴Mason's 1927 Minn. Stat., secs. 1939 and 1938-5.

¹⁵Mason's 1927 Minn. Stat., secs. 1945 and 1938-7.

¹⁶Mason's 1927 Minn. Stat., sec. 1946-3 et seq.

¹⁷Mason's 1927 Minn. Stat., sec. 1959 et seq.

¹⁸Mason's 1927 Minn. Stat., sec. 1753-1 et seq. This act originally authorized the issue of bonds in an amount not exceeding 10 per cent of the assessed value. It is amended by chapter 181, Laws of 1923, to eliminate the debt limit.

¹⁹Mason's 1927 Minn. Stat., sec. 1754 et seq. This act was apparently a re-enactment of chapter 334 above, for the purpose of authorizing a bond issue up to 15 per cent of the assessed valuation. It should have been repealed by chapter 181, Laws of 1923.

Laws of 1927²⁰ relating to sewage disposal plant bonds. In addition many home rule charters provide bond procedure. Due to the constitutional requirement that home rule charters shall be subject to the general laws of the state, these cannot be considered complete bond codes and it is sometimes a very nice question whether the charter provision or general law is controlling.²¹

POWER TO ISSUE BONDS

Before preparing bond proceedings it is necessary to determine whether the municipality has the power to borrow money and issue negotiable bonds for the intended purpose. It is not enough that the intended use of the money is within the general powers of the municipality, since a law granting the power to perform a certain act does not imply the power to issue bonds to provide money for such purpose.²² Section 1942 of Mason's 1927 Minnesota Statutes grants to the various municipal corporations power to issue bonds for a large number of purposes. The power to issue bonds for other purposes may be found in other acts, or in the special charter of the particular municipality. Special care is needed in determining whether a city or village incorporated under special act or charter may issue bonds for the intended purpose. Section 1937 of Mason's 1927 Minnesota Statutes provides that nothing in chapter 10 is to be construed as abrogating any restriction imposed, or modifying or extending any powers conferred upon any city, village or borough by any provision of its charter relating to corporate indebtedness. It is necessary to compare the power granted to the municipality in the special charter.

LIMIT ON INDEBTEDNESS

If it is determined that the municipality has the power to borrow money for the contemplated purpose, the next consideration is the debt limit of the particular municipality. The power to issue bonds does not authorize an issue in excess of or outside the debt limit prescribed by law for the municipality.²³ Since no

²⁰Section 1799-1 et seq. Mason's 1927 Minn. Stat., sec. 1799-1 et seq., as amended by chapter 244, Laws of 1929.

²¹Beck v. City of St. Paul, (1902) 87 Minn. 381, 92 N. W. 328. Except as expressly limited, Chapter 10 applies to all home rule charter cities. Oakman v. City of Eveleth, (1922) 153 Minn. 117, 189 N. W. 932.

²²Roger v. Le Sueur County, (1894) 57 Minn. 434, 59 N. W. 488; Bangor Savings Bank v. City of Stillwater, (C.C. Minn. 1891) 46 Fed. 899; Goodnow v. Ramsey County, (1865) 11 Minn. 31 (Gil. 12).

²³Beck v. City of St. Paul, (1902) 87 Minn. 381, 92 N. W. 328.

limit on municipal indebtedness is fixed in the state constitution, municipalities are free to contract indebtedness to any extent except as limited by general law or special charter. Home rule charters may provide a debt limit, which, however, cannot exceed 10 per cent of the assessed value of taxable property.²⁴ Many charters provide a lower limitation.²⁵ The debt limit for other municipalities, except school districts, is also fixed at 10 per cent of the assessed value.²⁶ Prior to 1927 there was no limit on the amount of debt which could be contracted by many school districts.²⁷ Since 1927 the indebtedness of all school districts has been limited to 20 per cent of the assessed value.²⁸ The statutory limit on indebtedness applies only to "net debt" and in defining the term the legislature excluded obligations payable primarily or solely from special assessments, from earnings of utilities, or from other special sources, and also ordinary orders or warrants.²⁹ A number of special acts provide that bonds may be issued for a particular purpose without regard to existing indebtedness.³⁰ Nevertheless, such bonds may be included in the municipality's debt statement, in determining whether a margin exists permitting the issue of additional bonds for some other purpose. The face value only of indebtedness is considered in determining whether the authorized limit has been exceeded.³¹ The assessed value on which the limit is computed is the "latest valuation for purposes of taxation as finally equalized."³² This means the percentage value on which taxes are actually levied, and not the full and true

²⁴Mason's 1927 Minn. Stat., sec. 1272.

²⁵If the debt limit fixed by the charter is less than 10 per cent, this lower limit is controlling. *American Electric Company v. City of Waseca*, (1907) 102 Minn. 329, 113 N. W. 899.

²⁶Mason's 1927 Minn. Stat., secs. 1938 and 1938-4.

²⁷*Oliver Iron Mining Co. v. Independent School District*, (1923) 155 Minn. 400, 193 N. W. 949.

²⁸Mason's 1927 Minn. Stat., sec. 1938-4.

²⁹Mason's 1927 Minn. Stat., sec. 1938-3.

³⁰Mason's 1927 Minn. Stat., sec. 1799-1.

³¹*Finlayson v. Vaughn*, (1893) 54 Minn. 331, 56 N. W. 49.

³²Mason's 1927 Minn. Stat., sec. 1936.

³³*Phelps v. City of Minneapolis*, (1928) 174 Minn. 509, 219 N. W. 872. In chapter 359, Laws 1933, the Homestead Tax Law, the legislature provided that the value for purposes of taxation was not to be used in computing bonded debt limitations. It is doubted whether this proviso is germane to the title of the act. Another serious objection arises from the impossibility of obtaining from the various county auditors any showing as to value of property except that for purposes of taxation. A bill to amend Section 1936 to clear up this difficulty was passed at the 1935 session of the legislature, but was vetoed by the governor.

value.³³ Money and credits are to be included.³⁴ It is computed as of the date the bonds are actually issued and delivered to the purchaser.³⁵ If the debt limit is exceeded, the excess debt is void.³⁶

INITIAL RESOLUTION

The initial proceeding for the issuance of bonds is the adoption by the governing body of a resolution declaring that it is expedient to borrow money for the particular purpose in a given amount.³⁷ The adoption of an initial resolution determining the expediency of the proposed issue is an essential act. The electors of the municipality cannot confer power to issue bonds by an election unless this resolution has been previously adopted.³⁸ In the absence of special charter provisions requiring that each resolution relate to one subject, there is nothing to prevent covering a number of separate and distinct purposes in the initial resolution. This, however, is not to suggest that more than one purpose may be combined in the proposition submitted to the voters. Such a submission ordinarily is held void.³⁹ Aside from the amount and purpose, the details are not required to be determined and set forth in the initial resolution. It is a common practice to set forth the proposed interest rate and exact maturities. This practice is subject to the disadvantage that such details fixed prior to the election may be binding thereafter, so that changes cannot be made even though

³⁴Hicken v. Board of Education, (1922) 153 Minn. 120, 189 N. W. 709. This results in a rather anomalous situation. The return to a school district from moneys and credits tax is but $\frac{1}{2}$ mill on the dollar. Yet the interest charge on bonded debt may be as much as 10 mills on the dollar. Hence, a municipality may have a serious time providing money for payment of bonded debt, if the amount of money and credits reported is a large part of the total assessed value.

³⁵Jones v. Brightwood School District, (1933) 63 N. D. 275, 247 N. W. 884; Mistler v. Eye, (1924) 107 Okla. 289, 231 Pac. 1045, and cases cited.

³⁶Schmitz v. Zeh, (1904) 91 Minn. 290, 97 N. W. 1049, 1 Ann. Cas. 322; State ex rel. Lownsbury v. District Court, (1907) 102 Minn. 482, 113 N. W. 697; Corbet v. Rocksbury, (1905) 94 Minn. 397, 103 N. W. 11. Compare the Note, (1920) 4 MINNESOTA LAW REVIEW 155, citing cases holding that where the limit is exceeded the entire debt is void.

³⁷Section 1942. Mason's 1927 Minn. Stat., sec. 1942. Although the maximum principal amount is required to be stated, it is not necessary to issue bonds in the full amount authorized by the electors. State ex rel. Chisholm v. Trask, (1923) 155 Minn. 213, 193 N. W. 121.

³⁸State ex rel. Sullivan v. Board of Education, (1917) 139 Minn. 94, 165 N. W. 880.

³⁹Truelsen v. City of Duluth, (1895) 61 Minn. 48, 63 N. W. 714. However, the submission of a proposition to construct a plant and pay therefor by a bond issue is not objectionable on this ground. Hamilton v. Village of Detroit, (1901) 83 Minn. 119, 85 N. W. 933.

of advantage to the municipality.⁴⁰ The procedure in the adoption of the initial resolution is not fixed in chapter 10. It is necessary to follow the procedure required by law for the particular municipality. This law may require very detailed procedure, such as that the resolution must be submitted in writing and read prior to its adoption, signed by the chief executive officer, and published before it becomes effective.⁴¹ In other cases any proceedings which show the required determination by the governing body are sufficient.⁴²

ELECTION PROCEEDINGS

Ordinarily the next requirement is the submission of the question to the voters. In the absence of some special charter provision or other law granting bond-issuing authority to the governing body, no bonds may be issued for any purpose except to refund previously issued bonds, unless the approval of the requisite majority of the voters has been obtained.⁴³ A simple majority is now required under chapter 10 except in village elections, where a five-eighths majority is required.⁴⁴ The governing body may submit the proposal to issue bonds to the voters at the general election or at a special election called for that purpose.⁴⁵ The notice of election is required to state the purpose and maximum principal amount of bonds to be issued. Unless the charter adds additional requirements, no other details of the bond issue need be stated in the notice. It need not show the proposed maturities, interest rate, or denominations.⁴⁶ The election must be called and held in accordance with the provisions of law applicable to the particular municipality. The election laws governing the various municipalities differ, and this requirement causes con-

⁴⁰Hodgman v. Chicago, etc., Ry., (1873) 20 Minn. 48 (Gil. 36); 44 C. J. 1208. But in Sorenson v. School District No. 28, (1913) 122 Minn. 59, 141 N. W. 1105, the court held that a change in maturities to conform to the requirements for bonds sold to the State Board of Investment was inconsequential.

⁴¹State ex rel. Childs v. Darrow, (1896) 65 Minn. 419, 67 N. W. 1012.

⁴²Roe v. City of Duluth, (1922) 153 Minn. 68, 189 N. W. 429; County of Mahanomen v. Klyver, (1930) 180 Minn. 423, 230 N. W. 891; Stecnerson v. Fontaine, (1908) 106 Minn. 225, 119 N. W. 400.

⁴³Mason's 1927 Minn. Stat., sec. 1938-6.

⁴⁴Mason's 1927 Minn. Stat., sec. 1938-6. Compare Sec. 1941, fixing a different majority for school district elections. It would seem evident that the latter section is within the express repeal of section 1938-13.

⁴⁵Mason's 1927 Minn. Stat., sec. 1938-6.

⁴⁶Schafer v. Independent School Dist., (1921) 151 Minn. 83, 185 N. W. 1019. Of course in addition it is necessary to state the date, place and hours of election.

siderable difficulty. In many cases it is far from easy to determine the amount of notice which is required and what are the required hours and polling places. The places of election often are not fixed by any law. The manner in which notice must be given differs for each kind of municipality. In villages and school districts organized under general laws, ten days' posted notice and one week's published notice of the election must be given.⁴⁷ Fourth class cities not under home rule charter are required to give five days' posted notice and five days' published notice.⁴⁸ Counties must give twelve days' posted notice.⁴⁹ Posting of sample ballots is required in city and county elections.⁵⁰ The hours of election also differ considerably.⁵¹ There is no requirement in chapter 10 as to the form of ballot.⁵² How little or how much of the proposition to be passed on by the voters shall be set out in the ballot is left to the discretion of the governing body. There are no general provisions relating to the manner in which the returns of the election are to be made and canvassed by the governing body. In some cases this is covered by the laws relating to special elections in the particular kind of municipality.⁵³

SALE OF BONDS

If the required majority vote is obtained, the next step is to arrange for a sale of the bonds. The bonds must be sold within

⁴⁷Mason's 1927 Minn. Stat., secs. 1172 and 2794. The confusion in the Minnesota statutes is here illustrated. A large number of Minnesota villages are still governed by chapter 145, Laws of 1885. Under secs. 16 and 17 of this act, a special election may be held under 10 days' posted or published notice. However, by Mason's 1927 Minn. Stat., sec. 1109, all election provisions of the General Statutes apply to such elections. Hence the requirements of section 1172 are controlling. This often is overlooked, with the result that the election may be invalid for lack of statutory notice.

⁴⁸Mason's 1927 Minn. Stat., sec. 1808.

⁴⁹Mason's 1927 Minn. Stat., sec. 786, as amended by chapter 384, Laws of 1931, which incorporates the provisions of chapter 297, Laws of 1929.

⁵⁰Mason's 1927 Minn. Stat., secs. 279 and 786, as amended.

⁵¹Compare Mason's 1927 Minn. Stat., sections 1169, 1135, 1149, 1809, and 305, chapter 198, Laws of 1929, and chapter 297, Laws of 1929. Mason's 1927 Minn. Stat., sec. 1169 apparently provides the hours for village elections, but chapter 198, Laws of 1929, requires that the polls at all elections remain open until eight o'clock. In school district elections the polls need be open only one hour under Mason's 1927 Minn. Stat., sec. 2993. Fortunately our supreme court has held that in the absence of fraud a deviation as to hours of opening and closing the polls will not be held fatal. *Soper v. County of Sibley*, (1891) 46 Minn. 274, 48 N. W. 1112, and see note, (1930) 66 A. L. R. 1169.

⁵²The requirements of sec. 1963 are sometimes followed, although this section relates only to bonds voted to the State of Minnesota. There is also a provision as to the form of ballot in county elections in Mason's 1927 Minn. Stat., sec. 786.

⁵³Chapter 297, Laws of 1929, provides definite requirements for county elections.

a reasonable time after the election, what is such reasonable time being a question of fact.⁵⁴ Before the bonds can be offered for sale, it is necessary for the governing body to determine the exact principal amount of bonds to be issued and the exact maturities.⁵⁵ All municipal bonds must mature serially in annual installments commencing not later than three years from the date of issuance, and the largest annual installment may not exceed two and one-half times the smallest installment.⁵⁶ This prevents piling up maturities in the later years. The maximum maturity may be twenty or thirty years, depending on the purpose of the issue.

The bonds must be offered at public sale after two weeks' published notice of the meeting to consider bids.⁵⁷ The time and place of this meeting must be fixed by the governing body, and also the newspaper in which a notice of the sale is to be published, if other than the official newspaper. The statute does not specify what shall be contained in the notice in addition to the time and place of meeting. Since the statute does not require that the notice contain any details of the bond issue, it is probably sufficient if the bidders are advised where such information may be obtained. It is, of course, better practice to give full information. Published notice means publication in a newspaper published in the county.⁵⁸ Frequently this is the only notice given to prospective purchasers. Since the best markets for bonds are the regular bond houses in the larger cities, it is often advisable to provide for additional notice in some financial paper, such as *The Bond Buyer*, published in New York City, or the *Commercial West*, published in Minneapolis, to give the sale wider publicity. At the appointed meeting the governing body may accept sealed or auction bids. If no satisfactory bid is received, the governing body may reject all bids and later sell the bonds at private sale, or it may call for other bids.⁵⁹ The only restrictions are that the bonds may not be sold below face value and accrued interest, and the maximum interest may not exceed six per cent, payable half-yearly.

⁵⁴*Neill v. City of Red Wing*, (1923) 156 Minn. 467, 195 N. W. 495.

⁵⁵*Mason's 1927 Minn. Stat.*, sec. 1938-5.

⁵⁶The customary practice is to increase the installments of principal as the interest cost is reduced, so that the annual tax levy will be as nearly equal as possible.

⁵⁷Section 1943 *Mason's 1927 Minn. Stat.*, sec. 1943. Notwithstanding this section, bonds sold at private sale are valid in the hands of a bona fide purchaser. *St. Paul Gas Light Co. v. Village of Sandstone*, (1898) 73 Minn. 225, 75 N. W. 1050. Also a contract for the purchase of bonds, although made without competitive bidding, is enforceable by the municipality. *City of Marshall v. Kalman*, (1922) 153 Minn. 320, 190 N. W. 597.

⁵⁸*Mason's 1927 Minn. Stat.*, sec. 10933 (14).

⁵⁹*Mason's 1927 Minn. Stat.*, sec. 1943.

An alternative method of sale by public subscription is provided by Mason's 1927 Minnesota Statutes, section 1946, and chapter 121, Laws of 1935. The bonds are then sold in smaller amounts to separate purchasers. Since the governing body is required to fix the interest rate in advance of the sale, this method does not usually result in the best sale possible. It is but little used. In the opinion of the writer, the provision in section 1946, which limits purchasers to citizens of the municipality, and the provision of chapter 121, which permits the governing body to limit the amount of bonds allowed to one purchaser, are not in the interest of the taxpayers of the municipality.

FORM OF BONDS

Before the bonds can be delivered to the purchaser, it is necessary that the form be determined by the governing body. The requirements in the statute are very general. The bonds are required to express the amount and terms of payment and the governing body must authorize certain officers to sign the bonds. In addition to the promise to pay, bonds customarily recite the authority for the issue and purpose, and certify compliance with all constitutional and statutory requirements. Municipal bonds are usually signed by the chief executive officer and the recording officer. The statute also requires that the bonds be countersigned by the official charged with the keeping of accounts.⁶⁰ It is sometimes not clear whether this official is the clerk or treasurer, since both officers are required to keep accounts for certain purposes. It is the customary practice to have the mayor, president or chairman sign the bonds; the clerk, recorder, or auditor attest them; and the treasurer countersign them; although the signatures of only the first two officers are printed on the interest coupons.

TAX LEVY

The law requires that before the bonds are delivered to the purchaser the governing body must provide a tax levy for payment of the principal and interest.⁶¹ As a margin of safety for tax delinquency, the statute requires that the tax levy for each year shall be not less than five per cent in excess of the face amount of the principal and interest. Since the taxes levied for

⁶⁰Mason's 1927 Minn. Stat., sec. 1939.

⁶¹Mason's 1927 Minn. Stat., sec. 1938-7.

a given year are not collected until during the following year, it is necessary to make each levy sufficient to meet principal and interest requirements during the year following the year stated. The tax levy resolution or ordinance must be filed with the county auditor of the county in which the municipality is located before the bonds are delivered to the purchaser.⁶² The county auditor is required to keep a register of each issue and deliver to the governing body his certificate that the tax has been levied and the bonds have been entered on his bond register.⁶³

There are a number of statutes which limit total municipal tax levies.⁶⁴ These do not apply to bond issues.⁶⁵ The only law which specifically limits the power of the municipality to levy taxes for the payment of bonded indebtedness is the per capita limit law.⁶⁶ This law, although general in form, applies particularly to municipalities in northern Minnesota which have high assessed valuations per capita. Nevertheless, the effect of this limit is to increase the financing cost of all municipalities, since there is no way of telling that it may not apply to the particular municipality at some later date. This law could be amended to provide clearly that where the total levy, including the required levy to pay the bonds, is not equal to the per capita limit when the bonds are issued, the bonds are to be payable from an unlimited levy. This would permit a municipality in southern Minnesota that is not otherwise affected by the law to assure lenders that its bonds will be paid from unlimited taxes.

SIGNING AND DELIVERY

The methods of signing and delivery of bonds are but suggested by the statute. The bonds are personally signed by the authorized officers but the coupons are usually authenticated by printed or lithographed facsimiles of the signatures.⁶⁷ It is necessary that the bonds be sealed with the corporate seal, if the municipality has

⁶²Mason's 1927 Minn. Stat., sec. 1938-9.

⁶³Mason's 1927 Minn. Stat. sec. 1938-8.

⁶⁴Mason's 1927 Minn. Stat., secs. 2060, 3013, and 1727.

⁶⁵Mason's 1927 Minn. Stat., sec. 1938-10. *Oliver Iron Mining Co. v. Independent School Dist.*, (1923) 155 Minn. 400, 193 N. W. 949; *In re Delinquent Taxes in Polk County*, (1920) 147 Minn. 344, 180 N. W. 240.

⁶⁶Mason's 1927 Minn. Stat., sec. 2061 et seq., as amended by chapter 206, Laws of 1929.

⁶⁷Mason's 1927 Minn. Stat., sec. 1939.

such a seal.⁶⁸ The Treasurer is required to deliver the bonds to the purchaser only upon receipt of the entire purchase price.⁶⁹

GENERAL COMMENTS

As previously stated, chapter 10 now contains the essential requirements for a workable code of procedure in the issuance of municipal bonds. There are some criticisms which should be made. Many of the amendments since 1905 have not clarified the procedure. The obvious inconsistencies between chapter 131, Laws of 1927 and the other sections of chapter 10 should be remedied by repeals. The statute should be made more specific and detailed in a number of respects, particularly as to the requirements in the initial resolution and in the proposition to be submitted to the electors. It is desirable to have uniform election procedure for all bond issues, even though this may not conform to the ordinary election procedure in the particular municipality, at least until the election procedure in the various municipalities is made less confusing.

Another very unsatisfactory situation in this state arises from the failure to fix a reasonable limit on the time for contesting the validity of municipal bonds. Under present statutes it would appear that a taxpayer might be able to contest the validity of bonds at any time until the bonds are paid. Our supreme court has pointed out the distinction between an attack on the bonds prior to their issue and a suit brought after the bonds are in the hands of a bona fide purchaser for value. The court has held that even illegal bonds may be enforced by a bona fide purchaser for value.⁷⁰ Nevertheless at this time when purchasers rely on the opinion of examining attorneys, there is often a nice question as to what defects in procedure may be considered inconsequential. If Minnesota municipal bonds are to obtain the most favorable market, this uncertainty should be eliminated so far as possible. In Wisconsin the attorney general is required to give an opinion on municipal bonds and there is a thirty day limitation on contests thereafter.⁷¹ In the opinion of the writer there is not sufficient benefit from such an opinion to justify imposing an

⁶⁸Mason's 1927 Minn. Stat., sec. 1939. Instruments not under seal are not bonds in strict legal sense. *San Antonio v. McHaffy*, (1877) 96 U. S. 312, 24 L. Ed. 816.

⁶⁹Mason's 1927 Minn. Stat., sec. 1943.

⁷⁰*White v. City of Chatfield*, (1911) 116 Minn. 371, 133 N. W. 962.

⁷¹Wisconsin, Statutes 1935, sec. 67.02 and sec. 330.23.

extra burden on the attorney general's office. The same result would be accomplished by a law providing for a short period for contesting the validity of bonds after the execution of a contract to sell the bonds. In cases of doubt as to the validity of the proceedings it should be possible to wait thirty or sixty days after the date of sale before delivering the bonds in order to be sure that the validity of the proceedings will not be challenged.

There is another consideration that seems to the writer to be of some importance. In chapter 10 there is set out a separate law relating to loans to municipalities from the State Board of Investment.⁷² The procedure for such loans is set out in detail and differs in a number of respects from the procedure required for the issuance or sale of bonds to the general public. The proposition submitted to the voters specifies that the bonds are to be sold to the state. The effect is to tie the hands of the governing body after the election. In some cases it may be evident that the municipality can obtain a better bid for its bonds from a private purchaser. Nevertheless, it is questionable whether the governing body has authority to make such a change in the procedure. The two methods of issuing bonds should be combined so that the municipality may either sell bonds at private sale or sell the bonds to the State Board of Investment, whichever offers the most favorable contract at the time of sale.

The requirements as to bond proceedings in home rule charter cities should also be clarified. The legislature, representing the state as a whole, is interested in preventing excessive issues of bonds or other situations where defaults in payment are likely to occur. Otherwise the legislature has no reason to require uniformity in bond proceedings, and the charter makers should have freedom in fixing the form of procedure. Such requirements as a reasonable limit on indebtedness, serial maturities and mandatory tax levies should apply to all municipalities. Procedural requirements such as the necessity of and method of calling an election and the manner of sale should be left to the discretion of the charter commission. This may be the proper construction of the present statute.⁷³ However, there are certain border line situations where it is difficult to determine whether the legislature intended to permit different procedure than that fixed by chapter 10.

⁷²Mason's 1927 Minn. Stat., secs. 1959 et seq.

⁷³Anderson, *Municipal Home Rule in Minnesota*, (1923) 7 MINNESOTA LAW REVIEW 306.

The present chapter 10 could form the basis for a very complete and satisfactory code of procedure. Fundamental changes would not be required. However, the chapter should be made sufficiently definite and certain so that a reasonably careful attention to the provisions would insure acceptable bond proceedings. Perhaps this recodification must wait until the entire code is revised or until Minnesota adopts the Wisconsin system of a permanently up-to-date code.