

Opinion No. 58-178

August 28, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P Whittaker, Assistant Attorney General

TO: Mr. Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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When the State Board of Finance considers a proposal pursuant to Chapter 122, Laws 1947 for pledge of the proceeds of the gasoline tax to secure street improvement bonds, is the Board required to consider the entire proposal to which the pledge relates?

CONCLUSION

No.

OPINION

ANALYSIS

We are advised that the instant question arises as follows. The State Board of Finance recently has received several proposals from municipal corporations requesting approval of the Board for the pledge of municipal gasoline tax proceeds to secure the payment of principal and interest on proposed street improvement bonds. In each case the Board has examined a copy of the contract negotiated between the municipality and the bonding company; and as a result the Board has concluded that it would be more profitable to the municipalities to sell such bonds at public sale instead of by negotiation and has so advised the municipalities by memorandum. At the August meeting of the Board of Finance, three additional requests of this nature were received. All related to bonds sold by negotiation. The bonds were fully secured by pledge of gasoline tax revenues, and the interest on such bonds is tax free. The Board of Finance felt that municipalities are paying too high a premium in this situation. Accordingly, before concluding as to what disposition should be made of the proposals before it, the State Board of Finance resolved to obtain an opinion from this office, advising them whether they are called upon in this situation to review the entire proposal, including all terms and conditions of the proposed bonds, or whether they are required by statute to approve only the pledge of the gasoline tax revenues.

Under Chapter 122 of the Laws of 1947 (compiled as Sections 14-46-7 through 14-46-13), municipal corporations collecting a gasoline tax are authorized to create and

maintain a "special street improvement fund" and to pay into that fund all or a designated portion of gasoline tax revenues for use as a revolving fund in financing municipal street improvement projects. The special fund thus created may be utilized generally in the re-purchase of outstanding special assessment assignable certificates or special assessment negotiable coupon bonds, and estimated annual proceeds may be anticipated by contract for this purpose. The statute (§ 14-46-12) further provides in relevant part as follows:

"After the creation of such special street improvement fund, the governing body of the municipality may, if consistent with all previous action taken pursuant to this act, irrevocably pledge, in whole or in part, the estimated annual proceeds of such fund, not to exceed a period of eleven (11) years, for the full and prompt payment of the principal of and the interest on special assessment assignable certificates or special assessment negotiable coupon bonds to be thereafter issued where default in such payments may occur by reason of nonpayment of special assessments levied against improved property and the owners thereof.

" Any proposal for the pledging of such funds for such purpose shall be first submitted to the state board of finance, and approved by it upon recommendation of the state comptroller. The Contract pledging the proceeds of such fund for such payments shall be by ordinance, irrevocable during the term of the contract, enacted by at least three-fourths of the fully authorized members of the governing body shall specifically provide and recite that all disbursements made pursuant to such contract shall not be considered or held to be general obligations of the municipality, and that the contracting parties may not look to any general or other fund for the performance of such contractual obligations.

* * *

(Emphasis added)."

The question reduces itself to a question of the proper construction of the language emphasized, as quoted above in reasonably full context. In our view, the meaning of the provision is clear. The action taken by the municipal corporation is the irrevocable pledge of estimated annual gasoline tax revenues. The proposal submitted to the State Board of Finance is the proposal for the pledging of such funds. This language cannot properly be construed to relate to all of the terms and conditions of the bond issue. This construction is reinforced by consideration of the title of the act, which clearly relates to the creation of the special street improvement fund from gasoline tax revenues and, among other things, the pledge of such revenues. General provisions relating to the issuance of street improvement bonds, for example, are found in the statutes relating to the provisional order method for street improvements (Section 4-37-16 et seq); the petition method for street improvements (14-37-33 et seq); and in such statutes as Section 14-41-4, spelling out the obligations undertaken by a municipal corporation which has issued special assessment street improvement bonds. Nothing in any of these statutes requires the State Board of Finance to examine into all of the terms and

conditions of a proposed issue of special assessment street improvement bonds merely by reason of the proposal by the municipality to secure payment of such bonds by a pledge of gasoline tax revenues.

Accordingly, we conclude that the State Board of Finance in the situation described above is required only to pass upon the pledge of municipal gasoline tax revenues which is proposed.