Municipal Technical Advisory Service
INSTITUTE FOR PUBLIC SERVICE

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Process for Issuing Debt

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Process for Issuing Debt

Reference Number: MTAS-558

General Filing Requirements

Within 45 days following the issuance or execution of a financing transaction, the city must submit a report (CT-0253 http://www.comptroller.tn.gov/sl/pubdebt.asp [1]) to the municipal governing body and to the Comptroller's Office. This report must include:

- a brief description of the transaction;
- the issuance and continuing costs of the transaction;
- a copy of the IRS information return, if applicable;
- a description of any continuing disclosure obligations
- a copy of the offering document, if any; and
- other information required by the funding board.

When a municipality discovers a failure to file as required above or an error in a filing, it may seek permission from the Office of the Comptroller to do a late filing. The director may order a late filing upon discovery of non-compliance. The municipality must file the required information within 15 days.

The funding board may exempt from these disclosure requirements de minimus transactions, transactions in which the municipality is required to participate in a financing program, a transaction that is a conduit for a non-governmental entity, and transactions in which cost disclosure is inconsistent with the intent of this law. T.C.A. § 9-21-151.

Note Requirements

Bond anticipation notes may be issued for no more than two years from the date of issue. The Office of the Comptroller must approve the issue and may approve two extensions of two years each for a six-year total. During such an extension period, the city has to begin retiring the debt. T.C.A. §§ 9-21-501, *et seq*.

Capital outlay notes also must be approved by the Office of the Comptroller. Several time frame options are available, including three-year notes with two three-year renewal periods, 10-year notes for purchasing land, and 12-year notes. Twelve-year capital outlay notes totaling less than $2 million must be sold at a competitive public sale or by an informal bid process. Twelve-year capital outlay notes totaling more than $2 million must be sold at a competitive sale. T.C.A. §§ 9-21-601, *et seq.*

Grant anticipation notes may be issued for various public works projects. They are secured only by the pledge of grant funds under contract between the federal or state government and the city. However, the interest on such grant anticipation notes may be a general obligation of the city. Grant anticipation notes may be issued for three years or for seven years with the approval of the Office of the Comptroller. Under certain conditions, they may be extended to 10 years. T.C.A. §§ 9-21-705, *et seq.*

Tax anticipation notes for up to 60 percent of a city's total appropriations for a current fiscal year are authorized subject to prior approval by the Office of the Comptroller. These must be paid by the end of the fiscal year. If this is not possible, application for permission to issue funding bonds must be made to the Office of the Comptroller "within 10 days prior to the close of the fiscal year". T.C.A. §§ 9-21-801, *et seq*.

"Any note or promise to repay money issued ... contrary to the requirements of Chapter 21 ... shall be considered non-conforming and shall be subject to the restrictions and penalties of T.C.A. § 9-21-406." Upon identification of a non-conforming obligation, the Comptroller must notify the offending parties, including the local government. Notice must contain actions necessary to bring obligation into compliance and a time frame for doing so. Local government must issue a response within 10 business days containing a plan for compliance or a dispute of charges. State Funding Board charged with promulgating rules for identifying classifications of non-conformance and reasonable penalties for non-conformance. T.C.A. § 9-21-406.

To assure that no Tennessee local government slips into the habit of borrowing funds to pay annual operating expenses, any city issuing any debt under this chapter is required to send a balanced annual budget to the Office of the Comptroller for approval. If the director finds that the city is using unrealistic projections in its budget, he or she may require the governing body to adjust its estimates or increase its tax levy. T.C.A. § 9-21-403.

Before notes may be issued to finance industrial parks, a city must obtain a certificate of public purpose and necessity from the Building Finance Committee in the Industrial Development Division of the Department of Economic and Community Development. T.C.A. § 9-21-402, T.C.A. § 13-16-207.

Refunding Bond Requirements

Before issuing refunding bonds for either outstanding general obligation bonds or outstanding revenue bonds, the city's refunding plan must be submitted to the Office of the Comptroller. T.C.A. §§ 9-21-901, *et seq*., T.C.A. §§ 9-21-1001, *et seq.*

General Obligation Bonds

Reference Number: MTAS-130

The city council adopts an initial bond resolution stating:

- The maximum dollar amount of bonds to be issued;
- The project for which the bonds are to be issued;
- The maximum interest rate the bonds will be allowed to bear; and
- A statement of revenues to be used to pay the bonds. T.C.A. § 9-21-205.

The resolution may be adopted at a regular or a special meeting with only a simple majority vote. It takes effect immediately upon adoption and is not subject to veto. T.C.A. § 9-21-108.

The city publishes the resolution with a notice advising the community that if 10 percent of the registered voters present a petition calling for a referendum within 20 days from the publication of the initial resolution, an election will be held to authorize the bonds. T.C.A. § 9-21-206. If a petition is presented to force a referendum, the bonds may not be issued unless a majority of registered voters approve the issue. However, there is one exception: If three-fourths of the governing body votes that an emergency requires issuing general obligation bonds for water or sewer purposes, then a petition may not force a referendum. T.C.A. § 9-21-207.

The city council may act on its own to hold an election to determine if the voters want to issue general obligation bonds for a project. T.C.A. § 9-21-208. The code establishes procedures for holding bond elections. If an issue is not approved by the voters, then the city must wait at least three months before raising the proposition again. T.C.A. §§ 9-21-209–212.

In the process for the bond sale, the city prepares an official statement, which serves as a sales brochure for the debt issue and which normally is prepared with a financial adviser's help. The city decides whether it wants to pay one of the national rating agencies, such as Moody's, Standard & Poor's or Fitch's to issue a rating for the bonds and whether it wants to purchase bond insurance to further assure lenders that their money will be repaid.

The city adopts a final bond resolution authorizing the sale and a tax resolution affirming that annual taxes will be levied to pay bond principal and interest. T.C.A. § 9-21-215. To assure potential lenders that all legal requirements have been met, cities employ lawyers who specialize in bond issues (bond counsel) to prepare resolutions and other legal documents associated with the issue.

The city advertises the bond issue five days before the sale date either in a financial newspaper having national circulation or by electronic communication system generally available to the financial community. If the bond issue is for $5 million or less, the sale may advertise as provided above or in a newspaper having general circulation in the municipality. T.C.A. § 9-21-203.

General obligation bonds are sold by competitive bid (T.C.A. § 9-21-203). Bonds may be issued for up to 40 years, but the length of the issue may not "exceed the reasonably expected economic life of the project being financed". T.C.A. § 9-21-213(a). General obligation bonds must be sold for at least 98 percent of the face value of the indebtedness, known as "par". T.C.A. § 9-21-202.

Revenue Bonds

Reference Number:

MTAS-1746

Issuing revenue bonds is similar to issuing general obligation bonds, but there are no general law provisions for petitioners to force a referendum on revenue bonds. They may be sold by competitive bid or negotiation for at least 97 percent of par value. T.C.A. §§ 9-21-302–303.

Lenders providing money through revenue bonds must look for repayment to the revenue produced by the public works being financed. Therefore, revenue bond covenants frequently include detailed promises about how the city will operate its revenue-generating investment and handle its finances. Cities have the authority to make covenants about insuring and maintaining a public works project, keeping city books, performing audits, and many other operational details. There may be interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings, and other interest rate hedging agreements relative to revenue bonds. T.C.A. § 9-21-306.

Links:
[1] http://www.comptroller.tn.gov/sl/pubdebt.asp

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