



OFFICE OF THE ATTORNEY GENERAL

BONDS--STATE--FINANCING CAPITAL PROJECTS OF WASHINGTON PUBLIC POWER SUPPLY SYSTEM THROUGH ISSUANCE OF STATE BONDS

The legislature could, constitutionally, fund the construction of capital projects by the Washington Public Power Supply System through the issuance of state general obligation bonds; however, unless those bonds were to be authorized by the voters pursuant to Article VIII, § 3 of the state constitution, their issuance would be subject to the constitutional debt limitation established in Article VIII, § 1 of the constitution.

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August 10, 1981

Honorable King Lysen
St. Sen., 31st District
12864 Shorecrest Drive SW
Seattle, Washington 98146

Cite as:
AGO 1981 No. 10

Dear Sir:

This is in response to your request for our opinion on the following questions:

"1. Could the Legislature authorize the issuance of state general obligation bonds to finance the completion of WPPSS projects #4 and #5, in the event that WPPSS is unable to obtain sufficient financing at acceptable rates under their own statutory authority?

"2. If the legislature were to authorize such an issuance, would this be subject to the debt limitation established in Article 8, Section 1 of the state constitution?

"3. Would it matter if the legislature authorized general obligation bonds, or bonds payable from a specific revenue source for the purposes of Article 1, Section 1, and the debt limitation established thereunder?

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"4. Without amending the current limitation under Article 8, Section 1, what level of borrowing could the legislature authorize for all purposes, above and beyond bonds currently authorized, but not issued, including bonds for the completion of WPPSS projects 4&5?"

We answer question (1) in the affirmative and respond to questions (2), (3) and (4) in the manner set forth below.

ANALYSIS

The Washington Public Power Supply System (WPPSS)--as we explained in our letter to you of December 7, 1978 (copy enclosed)--is a joint operating agency formed by several public utility districts and municipal utility departments in accordance with the following provisions of RCW 43.52.360:

"Any two or more cities or public utility districts or combinations thereof may form an operating agency (herein sometimes called a joint operating agency) for the purpose of acquiring, constructing, operating and owning plants, systems and other facilities and extensions thereof, for the generation and/or transmission of electric energy and power. Each such agency shall be a municipal corporation of the state of Washington with the right to sue and be sued in its own name.

". . ." (Emphasis supplied)

Question (1):

Given this statutory characterization of WPPSS as a public agency (specifically, a municipal corporation) there is no question but that its capital projects could be funded, in whole or in part, with state funds granted or loaned to it pursuant to legislative authorization. See, Anderson v. O'Brien, 84 Wn.2d 64, 524 P.2d 390 (1974) and cases cited therein--holding that a grant or loan of state funds to another public agency is not prohibited by Wash. Const., Art. VIII, § 5 which states that:

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"The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation."

And, in turn, the state financial assistance thus made available to WPPSS therefore could, constitutionally, be funded through the issuance of state general obligation bonds--again, if expressly authorized by the legislature. We therefore answer your first question in the affirmative.

Question (2):

It is equally clear, however, that any such state general obligation bonds would be subject to the state debt limitation established by Article VIII, § 1 (Amendment 60) of the state constitution if their issuance were to be authorized by the legislature in accordance with subsection (h) thereof.^{1/} On the

1/ But, notably, this provision of the constitution requires more than a simple majority vote of both houses for the passage of any such authorization; specifically, it reads as follows:

"(h) The legislature shall prescribe all matters relating to the contracting, funding or refunding of debt pursuant to this section, including: The purposes for which debt may be contracted; by a favorable vote of three-fifths of the members elected to each house, the amount of debt which may be contracted for any class of such purposes; the kinds of notes, bonds, or other evidences of debt which may be issued by the state; and the manner by which the treasurer shall determine and advise the legislature, any appropriate agency, officer, or instrumentality of the state as to the available debt capacity within the limitation set forth in this section. The legislature may delegate to any state officer, agency, or instrumentality any of its powers relating to the contracting, funding or refunding of debt pursuant to this section except its power to determine the amount and purposes for which debt may be contracted."

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other hand, the legislature could, instead, submit a bond authorization proposal to the voters in accordance with Article VIII, § 3 of the constitution which provides as follows:

"Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein. No such law shall take effect until it shall, at a general election, or a special election called for that purpose, have been submitted to the people and have received a majority of all the votes cast for and against it at such election."

And any general obligation bonds thereafter issued pursuant to such voter approval would, by the terms of Article VIII, § 3, supra, not be subject to the debt limitation contained in Article VIII, § 1.^{2/}

Question (3):

Your third question asks:

"Would it matter if the legislature authorized general obligation bonds, or bonds payable from a specific revenue source for the purposes of Article 8, Section 1, and the debt limitation established thereunder?"

This question, presumably, is asked in the light of subsection (f) of Article VIII, § 1 (Amendment 60), supra, which also contains an exception to the general debt limitation--as follows:

^{2/} See also, subsection (d) of Article VIII, § 1 (Amendment 60).

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"(f) Notwithstanding the limitation contained in subsection (b) of this section, the state may pledge its full faith, credit, and taxing power to guarantee the payment of any obligation payable from revenues received from any of the following sources: (1) Fees collected by the state as license fees for motor vehicles; (2) Excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel; and (3) Interest on the permanent common school fund: PROVIDED, That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due on all obligations for which said source of revenue is pledged."

It is, therefore, true that bonds which are payable only from one of the revenue sources thus referred to are, likewise, not subject to the debt limitation of Article VIII, § 1. But, at the same time, we should also point out that each of those revenue sources has specifically been earmarked, by other provisions of the constitution, for purposes other than general capital construction at either the state or municipal level. The first two (motor vehicle license fees and fuel tax revenues) may only be used for highway purposes under Article II, § 40 (Amendment 18) while the third (interest on the permanent common school fund) has been set aside, by Article IX, § 3 (Amendment 43), for the construction of public school facilities.

Question (4):

Your fourth and final question, as we understand it, assumes the applicability of Article VIII, § 1 (Amendment 60), supra, and asks,

". . . what level of borrowing could the legislature authorize for all purposes, above and beyond bonds currently authorized, but not issued, including bonds for the completion of WPPSS projects 4&5?"

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To the extent that this question calls for a specific dollar figure as of today, we must refer you to the State Treasurer's Office which maintains that information. The formula, however, is set forth in subsection (b) of the constitution itself as follows:

"(b) The aggregate debt contracted by the state shall not exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than nine percent of the arithmetic mean of its general state revenues for the three immediately preceding fiscal years as certified by the treasurer. The term 'fiscal year' means that period of time commencing July 1 of any year and ending on June 30 of the following year." (Emphasis supplied)

We also note that the State Treasurer's most recent certification, dated December 8, 1980 and covering fiscal year 1981, states, by way of a brief summary as of that date, that:

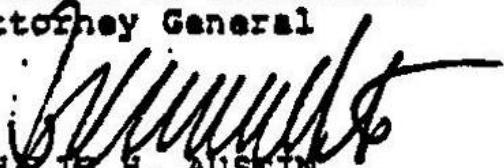
"In accordance with the procedures and computations defined below, (a) the maximum debt authorization subject to limitation for Fiscal Year 1981 is \$1,526,880,000, and (b) under the current constitutional and statutory limitations, approximately \$587,785,000 in additional indebtedness could be incurred for Fiscal Year 1981."

We trust that the foregoing will be of some assistance to you.



Very truly yours,

KENNETH O. EIKENBERRY
Attorney General


PHILLIP H. AUSTIN
Deputy Attorney General