

THE FINANCIAL, LEGAL, AND ACCOUNTING PROCEEDS FOR THE  
ISSUANCE OF BONDS AND THE ACCUMULATION OF SINKING  
FUNDS FOR POLITICAL SUBDIVISIONS OF THE STATE OF  
OKLAHOMA

By

E. WAYNE CARSON

"

Bachelor of Science

Oklahoma Agricultural and Mechanical College

Stillwater, Oklahoma

1949

Submitted to the Faculty of the Graduate School of  
the Oklahoma Agricultural and Mechanical College  
in partial fulfillment of the Requirements

for the Degree of

MASTER OF SCIENCE

1950

UNIVERSITY OF ILLINOIS  
AGRICULTURAL & MECHANICAL COLLEGE  
LIBRARY  
JAN 17 1951

THE FINANCIAL, LEGAL, AND ACCOUNTING PROBLEMS FOR THE  
ISSUANCE OF BONDS AND THE ACCUMULATION OF SINKING  
FUNDS FOR POLITICAL SUBDIVISIONS OF THE STATE OF  
ILLINOIS

H. WAYNE CARSON  
MASTERS OF SCIENCE  
1950

THESIS AND ABSTRACT APPROVED:

George B. McCawen  
Thesis Adviser

Eugene T. Schauer  
Faculty Representative

W. G. Mcintosh  
Dean of the Graduate School

266745

## PREFACE

This study was undertaken to gather and present current laws and accounting practices relating to Bonds and Sinking Funds of political subdivisions of the State of Oklahoma. Although the possibilities have not been exhausted an attempt has been made to present the more common problems encountered by a municipality issuing bonds.

For helpful assistance in obtaining data for this study, the writer is deeply indebted to the Librarians of the Document Room and Commerce Library, the County Treasurer's Office of Payne County, Oklahoma, and the City Clerk's Office of Perry, Oklahoma.

E. W. C.

## TABLE OF CONTENTS

	<u>Page</u>
LIST OF ILLUSTRATIONS	vi
<u>Chapter</u>	
I. THE PROBLEMS AND DEFINITIONS	1
The Problem	1
Need of the Study	2
Delimitations	2
Definitions	3
II. THE ECONOMIC CONCEPTS OF MUNICIPAL BONDS	7
The Purpose of Bonds	7
Judging the Investment Soundness of Municipal Obligations	8
Situations Favorable for Borrowing	12
Arguments Against Borrowing	14
Bonding Versus Pay-as-you-go	15
III. LEGAL PROBLEMS	18
Debt Limitation	18
Authorization of Bond Issue	22
Petition for Election	22
Notice of Election by Publication	24
Elections	26
Approval of County Attorney	30
Approval of State Bond Commissioner	31
Approval of the Court	32
Certificate of Registration	33
Types of Bonds	34
Serial Bonds	34
Optional Funding or Refunding Bonds	36
Revenue Bonds	38
Character of Bonds	48
Negotiable	48
Denomination	49
Interest Rates	50
Maturity Dates	51
Unconditional Liability of Municipality	53
Interest Coupons Attached	53
Sale of Bonds	54
Advertising for Bids	54
Contestability of Bonds	55

Cannot Be Sold for Less Than Par Plus	
Accrued Interest	55
Premium on Sale of Bonds	57
Uses of Proceeds From Sale of Bonds	58
Accumulation of Sinking Fund and	
Retirement of Bonds	59
Accumulation of Sinking Fund	59
Surplus in Sinking Fund	61
Deficit in Sinking Fund	64
Uses of Sinking Fund	67
IV. ACCOUNTING AND FINANCIAL PROBLEMS	69
Accounting for Issuance of Bonds	69
Budgetary and Accounting Controls for	
the Accumulation of Sinking Funds and	
Retirement of Bonds	71
Calculations of Sinking Fund Require-	
ments Each Year	85
V. APPRAISAL AND CRITICISM OF STATE	
PROCEDURE AND LAW	88
BIBLIOGRAPHY	94

## LIST OF ILLUSTRATIONS

<u>Illustration</u>	<u>Page</u>
1. Summary of Information Required to Complete Uniform Credit File for Municipal Obligation Form	10
2. Sample Page From Bond Register of City of Perry	70
3. Detail of Bonded Indebtedness of City of Perry as of June 30, 1949 Not Affecting Homesteads	73
4. Detail of Bonded Indebtedness Incurred Prior to January 8, 1937--City of Perry, Oklahoma	74
5. Treasurer's Record of Cash Receipts of Sinking Funds, City of Perry, Fiscal Year Ending June 30, 1949	78
6. Extraction From Monthly Treasurer's Report	79
7. Sinking Fund Budget of City of Perry For Fiscal Year 1949-50	81
8. Statement of Sinking Fund Cash of City of Perry, Fiscal Year 1948-1949	82
9. Sinking Fund Balance Sheet, City of Perry, June 30, 1949	83
10. County Excise Boards Appropriations for City of Perry, For Fiscal Year Ending June 30, 1950	84

## CHAPTER I

### THE PROBLEM AND DEFINITIONS

The problem. Bonds are the means by which cities and other political subdivisions of the state may make needed expenditures in excess of currently available cash and estimated future revenues of the current fiscal year. As these bonds must be paid by the citizens of the municipality, common logic dictates that the citizens be the authority for their issuance. The laws of the state cover this point and many others in various sections of the statutes, in the state constitution, and in court cases. Accounting for such bonds is based squarely upon the law, but involves, also, some procedures not covered by the law.

This is an investigation of the legal, financial, and accounting problems encountered by a municipality in the issuance of bonds and the accumulation of a sinking fund for their retirement. It begins with a consideration of the question of whether to finance a proposed project on a pay-as-you-go basis or by bonding; and then, if bonds are decided upon, it covers the procedure for issuance of the bonds, the provisions for their retirement, and the method of liquidation of the indebtedness. It explains the duties of the various governmental agencies

and officials involved in the indebtedness cycle and reviews many of the court cases and general practices relating to the subject.

Need of the study. The laws relating to bonds and sinking funds have undergone many changes from time to time. To determine the legal status of any question requires a search of the statutes, the constitution, and records of court cases. There is no available source of information that has gathered together the related laws on bonds and sinking funds and their interpretation by the courts.

All persons living within the corporate limits of a municipality should understand how a bond issue will affect them and their municipality. If more citizens had an adequate understanding of the legal and economic implications of bonded indebtedness the financial history of many of our cities would read differently.

Delimitations. This study was limited to the problems dealing with bonds and sinking funds that might be encountered by political subdivisions of the State of Oklahoma. It is not concerned with such problems as might be encountered by the State or any of its agencies.

This study is chiefly concerned with the laws in effect at the time of this writing, but a reference is



made to laws repealed by legislative action and laws declared unconstitutional by the courts to point out recent changes in the laws.

Definitions. Usually a town or city is thought of when "municipal or municipality" are mentioned. But the statutes and the constitution use the terms to mean any of the various political subdivisions of the state. The Statutes define municipality as "any school district, independent or otherwise, any township, any city or town irrespective of the form of government prevailing in said city or town, and any county."<sup>1</sup> Unless otherwise indicated, this definition will be implied in this study.

A "bond" is "a written promise to pay a specified sum of money, called the par value, at a fixed time in the future, called the date of maturity, and carrying interest at a fixed rate, payable periodically."<sup>2</sup>

The term "governing board", as it is used in this study, refers to the elected officials of the municipality, namely: the council of a city; the town council or board of trustees of a town; the board of education of an independent school district; any school district

---

<sup>1</sup> 62 Okl. St. Ann., Sec. 353.

<sup>2</sup> The National Committee on Municipal Accounting, Bulletin No. 4, Municipal Accounting Terminology, p.4. Chicago: National Committee on Municipal Accounting, 1936.

board; and the board of county commissioners of a county.<sup>3</sup>

"The 'fiscal year' shall commence on the first day of July in each year, unless otherwise provided by law."<sup>4</sup>

"Levy" used as a "(verb) means to impose taxes or special assessments."<sup>5</sup>

"Levy" used as a "(noun) means the total of taxes or special assessments imposed by a governmental unit."<sup>5</sup>

The National Committee on Municipal Accounting defines the term "fund", as used in governmental accounting, as follows:

A sum of money or other resources (gross or net) set aside for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations. A fund is a distinct financial or fiscal entity.<sup>6</sup>

An "appropriation" is "an authorization by the legislative body to make expenditures and incur liabilities for specific purposes."<sup>7</sup>

---

<sup>3</sup> 62 Okla. St. Ann., Sec. 348.3.

<sup>4</sup> Const. Art. X, Sec. 1.

<sup>5</sup> The National Committee on Municipal Accounting, Bulletin No. 4, op. cit. p. 13.

<sup>6</sup> The National Committee on Municipal Accounting, Bulletin No. 6, Municipal Accounting Statements, p. 142. Chicago: National Committee on Municipal Accounting, 1936.

Ibid, p. 134.

"Serial bonds" as defined by the National Committee on Municipal Accounting are:

- . . . issues redeemable by installments, each of which is to be paid in full out of revenues of the year in which it matures, or revenues of the preceeding year. Some state laws or regulations have further defined serial bonds to include some or all of the following features:
1. The payments must be in installments.
  2. The installments must be consecutive.
  3. Payments must be made during at least two-thirds of the life of the whole issue.
  4. No one years installment may be more than three times the amount of the smallest yearly installment unless the bonds are annuity bonds.<sup>8</sup>

"Revenue bonds" are "bonds to be paid solely from earnings, usually those of a municipally owned utility, or other public service enterprise for payment of which the revenues and possibly the properties of the enterprise are pledged."<sup>9</sup>

A "sinking fund" is "A fund established by periodical installments to provide for the retirement of the principal of term bonds and of other bonds specified to be retired from sinking funds."<sup>10</sup>

"Funding bonds" are "bonds issued to retire outstanding floating debt and to eliminate deficits."<sup>11</sup>

---

<sup>8</sup> Ibid., p. 151.

<sup>9</sup> Loc. cit.

<sup>10</sup> Loc. cit.

<sup>11</sup> Ibid., p. 142.

"Refunding bonds" are "bonds issued to retire bonds already outstanding. The refunding bonds may be sold for cash and outstanding bonds redeemed in cash or the refunding bonds may be exchanged with holder of outstanding bonds."<sup>12</sup>

---

<sup>12</sup> Ibid., p. 149.

## CHAPTER II

### ECONOMIC CONCEPTS OF MUNICIPAL BONDS

There are several questions to be considered by a municipality contemplating a bond issue. Is the new issue within the debt limitation of the municipality? What benefit will be enjoyed by those who must be taxed to retire the bonds? In view of the debt trend, record of tax collections and other pertinent facts what will be the marketability of the issue? What is the source of revenue to liquidate the bonds?

The purpose of bonds: Bonds are issued for a variety of purposes among which are:

1. The construction or purchase of improvements such as buildings, streets, recreational facilities, and public utilities.
2. The establishment of a working capital fund for stores or a service and repair department.
3. Funding accumulated deficits of revenue funds.
4. Refunding previous issues when they remain outstanding at maturity or may be acquired at less than par value, or the refunding issue is at a lower interest rate and the old issue may be acquired at par or at such a price to result in

a net saving by refunding.

5. Emergency expenditures, such as for flood relief, unemployment relief, soldiers' bonus, and storm relief.

Judging the investment soundness of municipal obligations. The president of the National Association of Supervisors of State Banks appointed a committee on municipal obligations with instructions to investigate the investment soundness of municipal obligations and report back to the association.<sup>1</sup> The committee reached the conclusion that their chief problem consisted of developing an outline of the pertinent factors necessary in analyzing the obligations of the municipality from the point of view of the investor.

In developing this outline, the committee had two objectives: first, to present in a clear, logical and brief outline the most important factors to be considered in evaluating the possibilities of default on municipal obligations, second, to prepare a credit file form<sup>a</sup> to be used in an analysis of the existing obligations of the average county or small city. A summary

---

<sup>1</sup> E. A. Wayne, et al, Municipals, pp. 1-4 and 31-54. Washington, D. C.: National Capital Press, 1941.

<sup>a</sup> A form to be used when collecting data upon which a judgment as to the soundness of the issue is to be made.

of the information required to complete the form is given in Illustration 1. The form covers six pages. Space is provided for exhibits and pertinent questions are included. The form would necessarily need to be supplemented with additional schedules due to the variations in accounting practice.

The committee considered the general credit obligation, also called full faith and credit, the best type of municipal obligation. The issuing unit agrees unconditionally to pay these obligations and interest according to the conditions of the contract.

A city or other municipality that contemplates a bond issue would do well to consider the view the potential investor will take of the issue. Among the things the investor will look for is the debt trend of the municipality, assessed valuation, record of tax collections, proportion of the budget absorbed by debt service, economic background, and the yield and ratings of the bonds. These factors alone will not give a fair basis for determining whether or not a bond is a safe investment. But by this method, the investor can weed out those issues not suited to his needs and make a more detailed analysis of the other issues under consideration.





It is hoped that all municipalities will soon furnish the type of information outlined in the Uniform Credit File for Municipal Obligations. This will be to the best interest of both investors and the local governments.

A question to be considered by both the municipality and the investors in municipal bonds is the source of income of its taxpayers. Is it largely dependent upon one factor, the removal or curtailment of which might reduce the rate of tax collections? For example, Ponca City, Oklahoma, is very much dependent upon the Continental Oil Company's Refinery. The removal of the refinery would greatly reduce the rate of tax collections for the city. In which case, if the city was burdened with a large bonded debt it would probably be unable to avoid default. Stillwater, likewise, would find itself in a similar circumstance if it was heavily burdened with outstanding bonds and the College closed or the staff and enrollment were greatly reduced.

Also, a city cannot be properly managed without a sound accounting system, and investors should insist upon proper and satisfactory financial statements in a standardized form.

Situations favorable for borrowing.<sup>2</sup> There are two general situations where city borrowing seems justified. One is to make a capital expenditure which could be financed from current tax levies, but would result in an inequity between current taxpayers who would pay all and the future taxpayers who would enjoy the use of the improvement and pay nothing.

The second situation is one where the sum is too large to be raised by current taxation, but a need exists which should not be left unsatisfied. Current requirements may be such that they may be justified in electing to pay as they use rather than pay as they go.

Also, it seems that no one would deny the wisdom of borrowing to finance the purchase or construction of a needed public utility or public health project that is or can be self liquidating. Equally justifiable would be borrowing to obtain money for emergency expenditures of various kinds. Sewerage projects come under the heading of justifiable borrowing situations. However, they need not always be financed by borrowing. M. H. Klegerman<sup>3</sup> outlines several methods of financing sewerage

---

<sup>2</sup> Commission on Economic Study of Milwaukee, The American City, LXIV (Jan., 1949), 85.

<sup>3</sup> "How to Pay for Sewerage Projects", The American City, LXV (Jan., 1950), 87.

Projects:

1. General obligation bonds. This may be done where the debt of the city is not too close to the statutory limitation for debt.

2. Special assessment bonds. This is limited by law to cover sewers only. Treatment plants and pumping stations must be financed by some other method.

3. Current revenues. This is rarely used for financing major construction work. The only way this could be used would be through the accumulation of funds. Many cities accumulated quite large funds during the war because of certain construction restrictions.

4. Short-term loans. This can be used only in cases when cost is not excessive and where loan can be repaid in about five years.

5. Revenue bonds or bonds retired from service charges. The courts have upheld the theory that a sewer service charge is identical with a water rate, inasmuch as sewerage is in fact spent water, and neither could operate without the other. The sewer service charge could be charged as a percentage of the water bill.

6. Special organizations represented by municipal

authority such as a sanitation commission. These bodies have authority to issue revenue bonds and charge sufficient for their services to make them self-liquidating. These bonds would not be charged against the borrowing power of the municipality.

Arguments against borrowing.<sup>4</sup> The arguments against borrowing apply equally as well to municipalities as to individuals. Borrowing is expensive and adds to the cost of the improvement or other purchases. However, municipalities can borrow at from two or three per cent interest while individuals can seldom borrow for less than six per cent.

The second argument against borrowing is that it leads to extravagance. Here again the situation is the same as applicable to individuals. However, at times the easiest way to make a purchase is to borrow and pay for it in installments, and this need not be an extravagant expenditure.

Then there is the matter of inflation. It is more inflationary to borrow than to tax, even though the borrowing be from individuals rather than banks.

---

<sup>4</sup> Commission on Economic Study of Milwaukee, op. cit. p. 10.

Finally, a city is in a much better position to face an economic depression if its full borrowing power remains unencumbered.

Bonding versus pay-as-you-go. There are several widely separated schools of thought on the question of bonding versus pay-as-you-go. Some contend that non-productive enterprises such as schools, parks, street paving, etc., should be financed from taxes. C. F. Bastable<sup>5</sup> says, "Non-economic expenditures is primarily to be met out of income, and unless it can be so dealt with ought not to be incurred."

Another school of thought holds that non-productive enterprises may be legitimately financed by bond issues. Don L. Essex<sup>6</sup> states:

Loans permit gradual payment of the original expenditure. Manifestly, it involves much less of a sacrifice for a community to pay a half-million dollars if payments are distributed over, say, twenty years, even including interest, than if the entire amount must be raised by taxation in one year. Loans therefore, diminish the subjective burden for the present.

---

<sup>5</sup> Public Finance, p. 670. London: Macmillan and Company, Ltd., 1927.

<sup>6</sup> Bonding Versus Pay-As-You-Go In The Financing Of School Buildings, p. 5. New York City: Bureau of Publications, Teachers College, Columbia University, 1931.

No one will deny that borrowing as a means of financing is costly. But through the bonding process, the taxpayer has the use of a part of his money for a number of years. For example, take a taxpayer whose share of direct payment on a project will be \$500.00<sup>7</sup> Without a bond issue, he must pay all of this the first year. If bonding is used, his total share will be \$800.00; but the amount will be distributed over twenty years with an annual charge of forty dollars. If the pay-as-you-go plan is used, he will not have the use of any part of his \$500.00 after the first year. But under the bonding plan, he can still use \$460.00 out of the \$500.00 the second year, \$420.00 the third year, and so on for twelve and a half years. During the next seven and a half years he is paying for the privilege of having his payments distributed over twenty years.

If the taxpayer's money is worth six per cent to him, the accumulated interest on the amounts the bonding plan allows him to use out of his \$500.00 totals \$172.20. This reduces his cost under bonding to \$627.80 instead of \$800.00

Another method of financing that combines some of the better features of pay-as-you-go and of bonding is to

---

<sup>7</sup> Ibid., p. 17.

accumulate in advance of expenditures sufficient cash for the project. This involves making an additional levy for a number of years. The fund is accumulated in the same manner in which the sinking fund accumulates to retire a bond issue. Many of our Oklahoma cities and towns have been farsighted and for a number of years have voted each year a five mill additional levy to go into a building fund for the erection of school buildings. A distinct advantage of this plan is that the tax is levied at a time when and only when the ability to pay of the taxpayers will permit it.

## CHAPTER III

### LEGAL PROBLEMS

There are many legal problems encountered by a municipality contemplating a bond issue. A host of legal requirements must be satisfied before the bonds may actually be issued. Even after the bonds are issued more problems arise as to the uses of the proceeds of the issue and the means to be employed to retire the obligation at its maturity. The limitations of this study prevent even an attempt to present all the legal requirements in the issuance of bonds and accumulation of a sinking fund for their retirement. This chapter will present some of the most common legal problems and possible solutions.

#### I. DEBT LIMITATION

Probably the first problem presenting itself to the governing board of a municipality considering a bond issue would be one regarding the debt limitation as set forth in the Constitution and in the Statutes. The Constitution states:

No county, city, town, township, school district, or other political corporation, or subdivision of the State, shall be allowed to become indebted, in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof, voting at



an election, to be held for that purpose, nor in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum of the valuation of the taxable property therein, to be ascertained from the last assessment for State and County purposes previous to the incurring of such indebtedness.<sup>1</sup>

The five per cent limitation is also stated in Statutes as follows, in part:

Provided, that the aggregate of the bonds issued for such purposes (establishing a system of electric lights for the town as per authorization<sup>2</sup>) shall not exceed an amount, including existing indebtedness, other than the construction of sewers, waterworks and the improvement of streets,<sup>a</sup> of five per cent of the taxable value of the property of such town . . . .<sup>3</sup>

Another section of the Oklahoma Statutes states:

Provided, that no indebtedness shall ever be incurred to an amount, including this indebtedness (for the purchase of a school site, erect or purchase and equip a building, or to make repairs - by a school district), exceeding in the aggregate five per cent of the valuation of the taxable property of such districts. . . .<sup>4</sup>

---

<sup>1</sup> Const. Art. X, Sec. 26.

<sup>2</sup> 11 Okl. St. Ann., Sec. 1007.

<sup>3</sup> 11 Okl. St. Ann., Sec. 1008.

<sup>4</sup> 70 Okl. St. Ann., Sec. 203.

<sup>a</sup> Probably means improvement of street intersections, which were declared to be public utilities in a previous section of legislation (11 Okl. St. Ann., Sec. 645) passed the same year (1910).

As noted above in 11 Okl. St. Ann., Sec. 1008, the five per cent limitation excludes indebtedness for the construction of sewers, waterworks and improvement of street [intersections]. This is clarified in another section of the Constitution as follows:

Any incorporated city or town in this State may, by a majority of the qualified property tax paying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in section twenty-six, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city: Provided, That any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by this Constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.<sup>5</sup>

If bonds have been issued under both sections twenty-six and twenty-seven of Art. X of the Constitution and an additional issue under section twenty-six is desired, a calculation is necessary to determine the indebtedness to which the limitation of section twenty-six apply. The Oklahoma Supreme Court has outlined the steps for

---

<sup>5</sup> Const. Art. X, Sec. 27.

calculating the present existing indebtedness to determine the validity of an additional bond issue under section twenty-six:

Where a city has an indebtedness, a portion of which is incurred under section 26, art. 10, of the Constitution, and a portion of which is incurred under section 27 thereof, and an existing sinking fund raised by reason of the indebtedness incurred under both sections, in determining the net indebtedness to which the limitation prescribed in section 26 applies, there should first be deducted from the gross debt that portion thereof incurred under section 27, and from the remainder there should be deducted that portion of the sinking fund raised to pay the indebtedness incurred under section 26. The balance remaining, after making such deductions, constitutes the "existing indebtedness" to which the limitation of section 26 applies. That portion of the sinking fund raised by reasons of the indebtedness incurred under section 27 may not be so deducted.<sup>6</sup>

The following example illustrates the procedure outlined by the Oklahoma Supreme Court for determining the maximum additional indebtedness that may be incurred under section twenty-six, art. ten of the Constitution:

1. Total taxable property valuation of Ten Million Dollars, 5% of which is		\$ 500,000.00
2. Total gross debt	\$ 850,000.00	
3. Less: portion incurred under section 27	200,000.00	
	\$ 650,000.00	
4. Less: portion of sinking fund raised to pay debt incurred under sec. 26	300,000.00	
5. Existing indebtedness to which the limitation of section 26 applies		<u>350,000.00</u>
6. Limitation of additional bonds which may be issued under section 26		<u>\$ 150,000.00</u>

<sup>6</sup> State ex rel. City of Shawnee v. Williamson, Atty. Gen., 186 Okl. 278.

## II. AUTHORIZATION OF BOND ISSUE

Petition for election. An election may not be called to consider a question of certain specific bond issues until a petition has been presented to the governing board requesting it. Among the instances requiring a petition are elections to approve bonds for: a system of electric lights, convention halls, county courthouses and jails, and county hospitals. Elections to consider bonds for most other purposes may be called by the governing board without a petition.

Regarding petition for an election for issuance of bonds for a system of electric lights, the Statutes state in part:

Provided, that no such election shall have been called until a petition signed by at least ten per cent of the bona fide electors from each ward of said town shall have been presented to the board of said town, asking that an election be called for the purpose herein provided.<sup>7</sup>

Bonds for the construction of a convention hall cannot be considered at an election unless the election is requested by a petition. In part the Statute states:

It shall be the duty of the Mayor and Council of such City, or if such City is under a commission

---

<sup>7</sup> 11 Okl. St. Ann., Sec. 1008.

form of Government, of the Mayor and Commissioners of said City upon a petition signed by 25 per cent of the legal voters of said City and filed with the City Clerk, to call a special election for the purpose of voting upon the issuance of such bonds . . . .<sup>8</sup>

Election on question of bonds for purchase or erection of county courthouse or jail and for a county hospital may not be ordered unless requested by the taxpayers in a petition:

Provided, However, that no such election shall be ordered unless a petition, stating the purpose for which the bonds are to be issued, and signed by at least one-sixth of the qualified electors and taxpayers as shown by last preceding enumeration of said county shall have been presented to the county commissioners praying that a vote be taken for the issuing of such amounts of bonds as may be asked for therein. [for county courthouses and jails]<sup>9</sup>

Whenever twenty per centum (20%) of the qualified voters of any county of this State as determined by the last previous General Election, shall petition the board of County Commissioners of such county to call an election for the purpose of issuing bonds to purchase a site for and construct a County Hospital, it shall be the duty of said County Commissioners to call an election . . . . . Said petition calling for said election shall name the amount of bonds to be issued and shall state the time of holding said election, which shall not be less than thirty (30) days from the first publication of any notice or the posting of said notice, and shall state for what purpose the hospital is to be used.<sup>10</sup>

---

<sup>8</sup> 11 Okl. St. Ann., Sec. 1193.

<sup>9</sup> 19 Okl. St. Ann., Sec. 734.

<sup>10</sup> 19 Okl. St. Ann., Sec. 782.

Notice of election by publication. In order that the taxpayers may be duly informed of an approaching election called to consider the issuance of bonds for certain purposes, notice by publication is required. The elections to consider the question of: bonds for a system of electric lights, bonds for water-works, bonds for convention hall, issuance of funding bonds, county building bonds, and bonds for county hospitals must be preceded by publication of a notice of such election. The various sections of the Oklahoma Statutes covering the above mentioned bond issues state as follows, in part:

. . . . notice of which [election on question of issuing bonds for system of electric lights] shall be given by publication in some newspaper published in said town at least twenty days prior to the date of said election, . . . . Said notice above referred to, to be published in a daily paper, and in at least two issues if same be published in a weekly paper.<sup>11</sup>

. . . . of which election [on question of issuing bonds for water-works] at least twenty days' notice shall be given by publication in at least one newspaper published in said city or town.<sup>12</sup>

. . . . such election [on question of bond issue for convention hall] to be called by proclamation signed by the Mayor and attested by the

---

<sup>11</sup> 11 Okl. St. Ann., Sec. 1008.

<sup>12</sup> 11 Okl. St. Ann., Sec. 279.

City Clerk. Said proclamation shall be published and notice given for the same time and said election held in the same manner and in conformity with the provisions of law now in force in Cities of the First Class in the issuance of bonds for water-works purposes.<sup>13</sup>

Said Ordinance or Resolution authorizing the issuance of said Bonds and fixing the details thereof shall not, however, be passed or enacted until notice of the intention to fund said Special Assessments, interest and/or penalties shall have been given by one publication in a newspaper having a general circulation in said municipality, which said notice shall briefly state the kind of Special Assessment, interest, and/or penalties to be funded, the aggregate amount of such special assessments, interest and/or penalties, and the time and place of the meeting at which said funding will be authorized. Such notice shall be published not less than ten nor more than thirty days prior to the date set therein for the authorization.<sup>14</sup>

The board of county commissioners shall give thirty days' notice of the election upon the question of issuing said bonds (to purchase or erect a county courthouse or jail), by publication in two weekly newspapers of general circulation published at the county seat of the county, unless there be but one weekly newspaper, in which event that one shall be sufficient; and if there be no weekly newspaper, then by five notices posted in five public places within the county. The notices of election shall contain the statement of the county commissioners, as provided by the preceding section, date of election, amount of bonds proposed to be issued and whether for courthouse or jail or both courthouse and jail. The notices shall be signed by

---

<sup>13</sup> 11 Okl. St. Ann., Sec. 1193.

<sup>14</sup> 62 Okl. St. Ann., Sec. 412.

the chairman of the board of county commissioners and attested by the county clerk.<sup>15</sup>

It is seen that notice of proposed elections, where such notices are required, must be published from not less than ten days prior to date of election in the case of bonds for funding matured special assessments to at least thirty days in the case of county building bonds. In most circumstances where notice is required, one publication will meet the statutory requirements.

Elections. The situations in which a municipality may issue bonds without the assent of the legal tax paying voters of the municipality are limited. Except where legislation has given the governing board specific authority to do so, no indebtedness may be incurred by such board without the assent of the taxpayers. The Oklahoma State Constitution has this to say on the subject:

No county, city, town, township, school district, or other political corporation, or subdivision of the State, shall be allowed to become indebted, in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof, voting at an election, to be held for that purpose, . . . .<sup>16</sup>

---

<sup>15</sup> 19 Okl. St. Ann., Sec. 736.

<sup>16</sup> Const. Art. X, Sec. 26.



Among the bonds that may be issued without an election are: bonds of a Municipal University, funding and refunding bonds, and revenue bonds for recreational facilities and parking stations. The legislature has given the governing officials authority to issue bonds, under specified conditions and limitation, without approval of the taxpayers at an election. For example, bonds of a Municipal University may be issued without an election after the university has been established by a vote of the qualified electors.

The Board of Regents of any Municipal University heretofore, or hereafter, created and established under the provisions of this act<sup>17</sup> shall have the right, power and authority, by resolution, to issue bonds of such Municipal University for the purpose of erecting buildings, or additions to present buildings, and the purchase of equipment for such buildings, and for refunding any present existing indebtedness of such University, to an amount not in excess of the sum of Five Hundred Thousand (\$500,000.)  
 . . . .<sup>18</sup>

A municipality is authorized to refund its indebtedness. The statute authorizing such does not specifically state that no election is required, but the same is implied:

Every county, every city or town, the board of education of every city, every township, and every school district, is hereby authorized and empowered to refund its indebtedness, including

---

<sup>17</sup> Laws 1937, p. 207.

<sup>18</sup> 11 Okl. St. Ann., Sec. 1329.

bonds, judgments and warrants, as hereinafter provided, upon such terms as can be agreed upon, and to issue new bonds with annual or semiannual interest coupons attached in payment for any sum so refunded; . . . .<sup>19</sup>

But as regards the issuance of general obligation bonds for funding matured special assessment obligations, the Statutes is very explicit in stating that no election is required:

This act<sup>20</sup> shall be full authority for the issuance of the Bonds under this act authorized, without reference to any other act of the legislature of Oklahoma, and said Bonds may be issued as herein provided without an election; provided, however, that the provisions of law, with respect to examination and approval as to form and procedure of municipal bonds by the Attorney-General of Oklahoma, shall apply also to bonds issued under this Act.<sup>21</sup>

Referring to issuance of bonds for both Recreational Facilities<sup>22</sup> and Parking Stations<sup>23</sup> the Oklahoma Statutes states, "No election shall be required for the issuance of said bonds."

---

<sup>19</sup> 62 Okl. St. Ann., Sec. 391.

<sup>20</sup> Municipal Funding Bond Act of 1937.

<sup>21</sup> 62 Okl. St. Ann., Sec. 415.

<sup>22</sup> 11 Okl. St. Ann., Sec. 1373.

<sup>23</sup> 11 Okl. St. Ann., Sec. 1353.

The Constitution states that no municipality "shall be allowed to become indebted, in any manner or for any purpose, to an amount exceeding in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof voting at an election, to be held for that purpose."<sup>24</sup> The Oklahoma Supreme Court<sup>25</sup> has declared that the part of 19 Okl. St. Ann., Sec. 734 requiring only a majority of the qualified voters approval is violative of Const. Art. 10, Sec. 26 which requires that three-fifths of such voters approve the issue. Section 734 of 19 Okl. St. Ann. is as follows, in part:

Provided, However, that the bonds shall not be issued until the question shall have been submitted to the people of the county and a majority of the qualified property tax paying voters voting at any general election, or special election called by the board of county commissioners (for the purpose of deciding the question of issuing bonds for county buildings) shall have declared by their vote in favor of issuing such bonds . . . .

The section of the Statutes authorizing bonds for a system of electric lights<sup>26</sup> also requires only a majority of the qualified voters approval to issue such bonds.

---

<sup>24</sup> Const. Art. X, Sec. 26..

<sup>25</sup> North v. McMahan, 26 Okl. 502.

<sup>26</sup> 11 Okl. St. Ann., Sec. 1008.

Probably if the courts were called on for a ruling they would find that part of the section in violation to Const. Art. 10, Sec. 26.

Approval of county attorney. Before any bonds of a municipality authorized by a vote of the people or by the governing board, where such board has such authority, are valid they must have endorsed thereon a certificate of approval of the county attorney of the county. This certificate is required by the Oklahoma Constitution which states as follows, in part:

No bond or evidence of debt of any county, or bond of any township or any other political subdivision of any county, shall be valid unless the same have endorsed thereon a certificate signed by the County Clerk, or other officer authorized by law to sign such certificate, and the County Attorney of the county, stating that said bond, or evidence of debt, is issued pursuant to law, and that said issue is within the debt limit.<sup>27</sup>

On this same subject, the Oklahoma Statutes reads as follows:

All general obligation bonds including funding and refunding bonds issued by a county, city, town, township, board of education or school district shall be signed by the Chief Officer of such municipality or political subdivision, attested by the clerk; and there shall be endorsed thereon a certificate signed by the County Attorney and County Clerk of the County in which such issuing municipality or political subdivision is located

---

<sup>27</sup> Const. Art. X, Sec. 29.

that said bonds or evidence of debt are issued pursuant to law and that said issue is within the debt limit. There shall be contained on each of said bonds a certificate of the Treasurer of the issuing municipality or political subdivision that he registered the said bonds.<sup>28</sup>

Approval of state bond commissioner. "The Attorney General is hereby made ex officio Bond Commissioner of the State of Oklahoma."<sup>29</sup> In addition to the approval of the county attorney, before a municipality may issue bonds the Bond Commissioner of the State must examine and pass upon the issue. He shall prescribe a method and procedure for issuance of bonds. The duties of the State Bond Commissioner as regards issuance of municipal bonds are stated in the Statutes.

It shall be the duty of the Bond Commissioner to prepare uniform forms and prescribe a method of procedure under the laws of the State in all cases where it is desired to issue public securities or bonds, in any county, township, municipality or political or other sub-divisions thereof of the State of Oklahoma; and it shall be the further duty of said Bond Commissioner to examine into and pass upon any security so issued, and such security, when declared by the certificate of said Bond Commissioner to be issued in accordance with the forms of procedure so provided shall be incontestable in any court in the State of Oklahoma unless suit thereon shall be brought in a court having jurisdiction of the same within thirty days from the date of the approval thereof by the Bond Commissioner.<sup>30</sup>

---

<sup>28</sup> 62 Okl. St. Ann., Sec. 358.

<sup>29</sup> 62 O. S. 1941, Sec. 11.

<sup>30</sup> 62 O. S. 1941, Sec. 13.

The Statutes clearly point out that bonds of a municipality would be invalid without the certificate of approval of the State Bond Commissioner. "No bond hereafter issued by any political or municipal sub-division of this State shall be valid without the certificate of said Bond Commissioner."<sup>31</sup>

Approval of the court. A municipality wishing to refund its existing indebtedness must appear before the court and present proof of debt and ask the court to determine the amount of its legal indebtedness. Notice by publication must be made at least ten days prior to the date of such hearing. Any interested person may attend said hearing and protest such refunding. If no appeal is taken on the issuance of refunding bonds within the time set forth by law for taking appeals the issue is uncontestable. The procedure to be followed in the issuance of refunding bonds is outlined in the Statutes.

Notice of the issuance of bonds provided for in this act,<sup>32</sup> shall be given by publication in a newspaper published at the county seat, or, if no newspaper is published at the county seat, then such publication shall be made in the official newspaper of such county, and by posting a copy of the same in five public places in the municipality, stating that on the day named

---

<sup>31</sup> 62 O. S. 1941, Sec. 14.

<sup>32</sup> R. L. 1910, Sec. 362.

therein the municipality will proceed before the county court of the county, if the amount be less than one thousand dollars, or before the district court, if the amount exceeds one thousand dollars, to make a showing and ask the court to hear and determine the amount of the outstanding legal indebtedness of said municipality, and to sign the bonds to be issued in payment of the same; and any person interested may remonstrate against the issuance of the same. Such notice shall be given for at least ten days before the day named for said hearing.<sup>33</sup>

As concerning the matter of protest against the refunding issue, the Oklahoma Supreme Court stated:

Where the district court has determined the validity of the warrant indebtedness of a school district under the refunding proceedings provided for by law, and has decreed that the funding bonds sought to be issued are valid and issued in strict accordance with the said funding law, and no objections or exceptions are made to such determination and decree and no appeal taken therefrom, the decree and judgment is final and conclusive.<sup>34</sup>

Certificate of registration. All general obligation bonds and refunding bonds of political subdivisions of the State of Oklahoma are required to be registered. On general obligation bonds, the Statutes says: "There shall be on each bond a certificate of the Treasurer of the issuing municipality or political subdivision that he registered the bonds."<sup>35</sup> And concerning the registration of refunding

---

<sup>33</sup> 62 O. S. 1941, Sec. 392.

<sup>34</sup> Prince v. St. Louis & S. F. Ry. Co., 110 Okl. 141.

<sup>35</sup> 62 Okl. St. Ann., Sec. 358.

bonds the Statutes relates as follows, in part:

The clerk of every county, city, town, township, school district and board of education, issuing bonds under this article<sup>36</sup> shall register the same in his office. Such bonds shall also, in every case, be registered by the county clerk, showing the date, number and amount thereof, rate of interest, number of coupons and amount of each, to whom payable, where payable, date of maturity, and, if optional, under what conditions; . . . the auditor shall upon being satisfied that such bonds have been issued according to the provisions of this article . . . register the same in his office in a book kept for that purpose . . . under his seal of office, certify upon such bonds the fact that they have been registered in his office according to law.<sup>37</sup>

Bonds for county courthouses and jails "shall be recorded by the county clerk and by the State Auditor, both of whom shall endorse the same on the back thereof."<sup>38</sup>

"Such bonds (street improvement bonds) shall be registered by the Clerk and Treasurer of such city or town in a book to be provided for that purpose and each bond shall bear a certificate of such registration . . . ."<sup>39</sup>

### III. TYPES OF BONDS

Serial bonds. All bonds issued by any political subdivision of the State of Oklahoma except those issued under the provisions of section 426a, title 62 Oklahoma Statutes

---

<sup>36</sup> Refunding Bond Act of 1910

<sup>37</sup> 62 O. S. 1941, Sec. 396.

<sup>38</sup> 19 Okl. St. Ann., Sec. 738.

<sup>39</sup> 11 O. S. Supp. 1949, Sec. 151.



1941<sup>40</sup> shall be serial bonds. They must mature within twenty-five years. The first installment shall not mature within two years of the date of the bonds, but must mature not later than five years after their date. The bonds shall mature in equal annual installments but the last installment may be of an odd amount to complete the retirement of the issue, not exceeding two previous installments. The denomination of the bonds shall be one hundred dollars or multiples of one hundred dollars not to exceed one thousand dollars, with the exception of the last numbered bond which may be of an odd amount, not exceeding one thousand dollars, to complete the full issue. The Statutes state as follows:

Whenever any municipal corporation, or political subdivision of the State of Oklahoma, shall vote any bonds or issue any funding or refunding bonds, such bonds shall be made to mature in equal annual installments, beginning not less than two (2) nor more than five (5) years after their date, except that the last maturing installment may be for such sum not more than two (2) installments, as will complete the full issue of such bonds, notwithstanding the necessity of varying the amount thereof to complete the same. The denomination<sup>a</sup> of said bonds shall be One Hundred Dollars (\$100.00) or multiples thereof, not exceeding One Thousand Dollars (\$1,000.00), except the last numbered bond may be for such

---

<sup>40</sup> Infra., p. 36.

<sup>a</sup> Probably should read "denomination".

odd amount not exceeding One Thousand Dollars (\$1,000.00), as will complete the full issue of said bonds.<sup>41</sup>

Optional funding or refunding bonds. The law has made provisions whereby a municipality may issue funding or refunding bonds with a provision that they may be redeemed on any interest paying date. These bonds would be designated as optional funding or refunding bonds. Such bonds may be called whenever there has been accumulated in the sinking fund an amount, in excess of the amount needed to pay the next two succeeding semi-annual interest coupons, sufficient to retire one or more bonds. The provision in the Statutes for optional funding or refunding bonds is as follows:

Any municipality may refund any part or all of its bonded and judgment indebtedness and the interest thereon, by agreement with holders of such indebtedness to be funded or refunded, by issuance of funding or refunding bonds maturing within twenty-five years from date. When any such funding or refunding bonds mature other than serially as provided by Section 5929 Oklahoma Statutes 1931<sup>42</sup>, they shall be optional and subject to redemption on any interest paying date. Said bonds shall be designated optional funding or refunding bonds, and shall recite that they are subject to redemption at any interest paying date. Said bonds shall be

---

<sup>41</sup> 62 Okl. St. Ann., Sec. 353

<sup>42</sup> 62 O. S. 1941, Sec. 353

<sup>43</sup> 62 O. S. 1941, Sec. 426a.

<sup>44</sup> Supra, p. 35.

authorized, executed, registered and approved in the same manner as funding and refunding bonds issued under other statutes in force . . . . Provided sufficient money is retained in the sinking fund to pay the next two succeeding semi-annual interest coupons coming due on each bond.

All bonds issued by any municipality except those issued under the provisions of this act, shall be serial bonds as required by Section 5929 Oklahoma Statutes 1931.<sup>43</sup>

Section 353, title 62 Oklahoma Statutes Annotated<sup>44</sup> is the 1947 revision of the 1927 law (62 O. S. 1941, Sec. 353) referred to in section 426a above, which law was passed by the legislature in 1939. Without a comparison of section 353 as revised in 1947 with the original law passed in 1927 it might seem that this section is contradictory to section 426a Oklahoma Statutes 1941. Section 353 as per the 1927 law is as follows:

Whenever any municipal corporation, or political subdivision, of the State of Oklahoma, shall vote any bonds or issue any funding or refunding bonds, such bonds shall be made to mature in annual installments, beginning not less than three nor more than five years after their date. Such installments shall be in equal amounts of One Hundred (\$100.00) Dollars, Five Hundred (\$500.00) Dollars, or One Thousand (\$1,000.00) Dollars, except that the last maturing installment may be for such sum less than two installments, as will complete the full issue of such bonds, notwithstanding the necessity of varying

---

<sup>43</sup> 62 O. S. 1941, Sec. 426a.

<sup>44</sup> Supra, p. 35.

the amount thereof to complete the same.<sup>45</sup>

It will be noted that none of the changes made in the 1947 revision were such to make the 1947 law any more contradictory to section 426a than the 1927 law. The only significant change was in the time the first installment could mature, not less than three years from their date in the 1927 law and not less than two years from their date in the law as revised in 1947.

Revenue Bonds. The Constitution provides that either in advance of or at the time of incurring an indebtedness requiring the assent of the voters, the municipality shall provide for the collection of an annual tax to pay the interest on such indebtedness and to retire same as it matures.<sup>46</sup> Disregarding this provision of the Constitution, the 1947 Legislature passed an act<sup>47</sup> authorizing an incorporated city or town to incur indebtedness for the acquisition of a water works system, and issue revenue bonds to be retired entirely from the revenue of the water works. Such indebtedness could be in excess of that allowed by article 10, section 26 of the Constitution and not within the exceptions provided for in article 10, section 27. Upon this authority the city of Pauls Valley passed a city

---

<sup>45</sup> 62 O. S. 1941, Sec. 353.

<sup>46</sup> Const. Art. X, Sec. 27.

<sup>47</sup> 11 O. S. Supp. 1947, Sec. 311-318

ordinance authorizing the issue of bonds in the amount of \$585,000.00 (which exceeded the 5% of the taxable property within the city) for the improvement and extension of the water system of the city. The principal and interest on these bonds were to be paid from the revenue derived from such improvements and extension of the water system. In *Burch v. City of Pauls Valley*<sup>48</sup> this act was declared unconstitutional by the Oklahoma Supreme Court. The bonds were therefore declared void. The decision of the court stated:

House bill 466, L. 1947, p. 56 et seq., appearing as section 311 to 318 inclusive, of Tit. 11 O. S. Supp. 1947, purporting to authorize incorporated cities and towns of the State, without the assent of the voters thereof, to incur indebtedness in excess of that permitted by section 26, article X of the Constitution, and not within the exception thereto provided by section 27 of said article X, is contrary to and violative of said provisions and therefore void.<sup>48</sup>

Commenting on the 1947 legislative act Mullen<sup>49</sup> said that in the light of the "special fund" doctrine, it has been urged that enlargement of the power of cities attempted by the legislative act should be as effective as statutes authorizing state agencies to incur indebtedness, notwithstanding the limitations prescribed by article X, section 23, 24 and 25 of the Constitution.

---

<sup>48</sup> *Burch v. City of Pauls Valley*, 201 P.2d 247 (Okla. 1948)

<sup>49</sup> James Mullen, "Validity of Revenue Bond Financing in Oklahoma", Oklahoma Law Review, II (Nov. 1949), 522-526.

The "special fund" doctrine states, in effect, that bonds issued by states or its subdivisions, if secured and payable only from the revenues to be realized from a utility or other property acquired from the proceeds of the bonds, do not constitute debts of the particular state or subdivision issuing them, within the definition of "debts" as used in the Constitution. In other words, a constitutional limitation upon a state or municipal indebtedness is not violated by an obligation which is payable from a special fund. If the state or municipality is not obligated to pay the obligation out of its general fund, in the event the special fund is not sufficient to pay it, the resources of the state or municipality are not depleted by reason of the indebtedness.

The Supreme Court of Oklahoma has not accepted the "special fund" doctrine in its entirety. The court upholds the "special fund" doctrine as respects state and state agencies, but has not permitted municipal governments to employ that method of financing. Mullen says the legislative act attacked in *Burch v. City of Pauls Valley* was destined to fail in its purpose of allowing a municipality to finance a public utility by a bond issue without electoral assent of the qualified voters, even though the bonds were to be retired entirely from a special fund. The Constitution, article X, sections 26 and 27 confers upon the voters of a

municipality the authority to say whether such bonds should be issued. The Oklahoma Supreme Court has held that "where the Constitution confers the power to do a particular act and prescribes the means and manner of doing such act, such means or manner is exclusive of all others."<sup>50</sup>

The question may logically be asked if the Oklahoma Legislature has exhausted all the possibilities which would permit special fund financing by municipalities, in the face of article X, section 26 and 27 of the Constitution. The recent decision of *Armstrong v. Sewer Improvement District No. 1*<sup>51</sup>, in which the constitutionality of a legislative act<sup>52</sup> providing for the organization and financing of sewer improvement districts was upheld, suggests an answer to the question. It seems that the legislature could avoid the constitutional debt limitation of municipalities by setting up special improvement districts for water systems in much the same fashion as it set up sewer districts in the *Armstrong* case.

But here a very important problem presents itself. Must the debt of an improvement district having an area identical with that of the municipality be considered in

---

<sup>50</sup> *City of Sapulpa v. Land*, 101 Okl. 22.

<sup>51</sup> *Armstrong v. Sewer Improvement District No. 1*, 199 P. 2d 1012 (Okla. 1948).

<sup>52</sup> 19 O. S. Supp. 1947, Sec. 871.

determining the debt limit of the municipality? In *Kennebec Water District v. Waterville*, 96 Me. 234, 52 Atl. 774 (1902) the Maine Supreme Court held that the debts of a water district need not be added in computing the debt of the co-terminous city. The question has not been tried in the Oklahoma courts so it remains for the Oklahoma courts to determine whether a special districts debts should be added to the amount of debt contracted by the municipality having an identical area.

In view of the fact that the courts have allowed a special fund financing for state agencies, the problem in question could be avoided if the legislature would create separate water districts as state agencies. There would then be no question concerning constitutional debt limitation for municipalities in such cases.

House Bill 466 (11 O. S. Supp. 1947), which was declared unconstitutional in *Burch v. City of Pauls Valley*, states as follows, in part:

All incorporated cities or towns within the State of Oklahoma are hereby authorized to issue revenue bonds, at an interest rate not exceeding five per cent, payable solely from revenue derived from the operation of any water works system either newly constructed or purchased under the authority of this Act or improved and extended under the authority of this Act . . . .<sup>53</sup>

---

<sup>53</sup> Session Laws 1947, p. 56.



Also passed by the 1947 Legislative Session were laws authorizing revenue bonds for the acquisition or construction of parking stations and recreational facilities, without the assent of the qualified voters of the municipality.

The authority to issue revenue bonds for the acquisition or construction of parking stations is granted only to cities having a population of not less than 140,000.<sup>54</sup> The authority to issue the bonds is stated in the Statutes as follows:

(a) To provide for the acquisition or construction of such parking stations the governing body of any such city is authorized to issue negotiable revenue bonds of the city secured by a pledge of, and payable from, the net revenues of any one or more of such parking stations. Within the discretion of the governing body of any such city, such bonds may be secured further by a trust indenture of such parking stations. Whenever such governing body shall execute any character of trust agreement imposing duties on a corporate trustee in reference to the payment of the bonds or enforcement of any right under the bonds for convenience such instrument may be and in this Act<sup>55</sup> is sometimes referred to as the "Indenture". Any such city is authorized to issue a separate and independent series of revenue bonds to provide for the construction of each parking station, or in the discretion of the governing body of the city a single series of bonds may be issued to provide for the construction of two or more parking stations. No election shall be required for the issuance of said bonds.

---

<sup>54</sup> 11 Okl. St. Ann., Sec. 1351.

<sup>55</sup> Session Laws 1947, p. 59-64.

Negotiable revenue bonds may also be issued by the governing body of any such city for the purpose of refunding bonds issued under this section, which may be secured in the manner herein provided for original bonds. No election shall be had for the issuance of such refunding bonds.

(b) The Revenue Bonds hereby authorized shall contain substantially the following provisions: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

No such bonds shall ever be a liability or debt of such city, but solely a charge upon the pledged revenues.

(c) The expense of operation and maintenance of any such parking station shall always be a first lien and charge against the income thereof. So long as any of said bonds or any interest thereon remains outstanding, the city shall charge or require the payment of fees and tolls for the use of the facilities of any such parking station, which shall be equal and uniform within classes defined by the governing body of such city, and which shall be at least sufficient to pay expenses of operation and maintenance and to pay the principal of and interest on the outstanding bonds as such principal matures and as such interest accrues, and to establish and maintain such reserve or reserves, if any, as may be prescribed in the ordinance authorizing the bonds or in the indenture.

(d) So long as any such revenue bonds are outstanding, no additional bonds of equal dignity shall be issued against the pledged revenues or the pledged revenues and properties, except to the extent and in the manner expressly permitted in the ordinance which authorized such outstanding revenue bonds, or in the indenture.

(e) Such bonds, and proceedings incident to their issuance shall be submitted to and approved by the Attorney General of Oklahoma, in the manner and with the effect provided in Title 62, Oklahoma Statutes 1941, Section 11, 13, and 14.

(f) Any bank, trust or insurance company organized under the laws of Oklahoma may invest its capital and surplus in bonds issued under the provisions of this Act. The officers having charge of any sinking fund of any state or any county, city, town, township or school district thereof may invest the sinking fund of such state, county, city, town, township or school district in bonds issued under the provisions hereof. Such bonds shall also be approved as collateral security for the deposit of any public funds and for the investment of trust funds.<sup>56</sup>

Revenue bonds for recreational facilities may be issued by "all cities which have a population of not less than One Hundred and Sixty Thousand (160,000) according to the last preceding Federal Census".<sup>57</sup> The statutory provision for the issuance of revenue bonds for recreational facilities is as follows, in part:

(a) To provide for the acquisition or construction of such stadia, sport arenas or other recreational facilities and/or additions thereto, and/or additions to existing stadia, sport arenas or other recreational facilities, including land and equipment therefor, the governing body of any such city is authorized to issue negotiable revenue bonds of the city secured by a pledge of, and payable from, the net revenues of any one (1) or more of such stadia, sport arenas or other recreational facilities, together with all future extensions or additions thereof or replacements thereof . . . . No election shall be required for the issuance of such bonds.

Negotiable revenue bonds may also be issued by the governing body of any such city for the

---

<sup>56</sup> 11 Okl. St. Ann., Sec. 1353.

<sup>57</sup> 11 Okl. St. Ann., Sec. 1371.

purpose of refunding bonds issued under this Section which may be secured in the manner herein provided for original bonds. No election shall be had for the issuance of such refunding bonds.<sup>58</sup>

Part (b), (c) and (e) of this section are the same as part (b), (c) and (e) of section 1353.<sup>59</sup>

There is reason to believe that the legislative authority to issue revenue bonds for the acquisition of parking stations and recreational facilities will be found to be unconstitutional if and when the Oklahoma Supreme Court is called on to hand down a decision on the matter. Both acts state that no election is required for the issuance of the revenue bonds. It was this identical provision in the legislative act, authorizing revenue bonds for water works, that was the basis for the courts holding the act unconstitutional.<sup>60</sup> But until such time as the legislative acts are held unconstitutional, they remain the laws of the state.

In 1949 the Oklahoma Legislature passed a law authorizing the issuance of revenue bonds for docks, boat houses and boats by cities of not less than 3,500 nor more than 4,000 population.<sup>61</sup>

---

<sup>58</sup> 11 Okl. St. Ann., Sec. 1373.

<sup>59</sup> Supra, p. 44

<sup>60</sup> Brunch v. City of Pauls Valley, 201 P. 2d 247 (Okla. 1948).

<sup>61</sup> 11 Okl. St. Ann., Sec. 1385.1

But in this bill it is specified that the question must be submitted to a vote of the property tax-paying voters of the municipality, and also must be approved by the Attorney General of Oklahoma.<sup>62</sup> The section of the statutes authorizing revenue bonds for docks, boat houses and boats is as follows:

To provide for the acquisition, construction and equipment of such docks, boat houses and boats, the governing body of any such city is authorized to issue negotiable revenue bonds of the City, secured by a pledge of, and payable from, the net revenue of such amusement and recreational facilities, together with all future extensions or additions thereof. Within the discretion of the governing body of any such city, such bonds may be secured further by a Trust Indenture on such docks, boat houses and boats.<sup>63</sup>

The law also clearly states that such revenue bonds shall be retired only from the pledged revenues and shall not be a liability of the issuing municipality. The bonds must contain a provision stating such facts. The law as it appears in the Statutes is as follows:

The Revenue Bonds hereby authorized shall contain substantially the following provision: "The holder hereof shall never have the right to demand payment of this obligation out of any fund raised, or to be raised, by taxation. No such bonds shall ever be a liability or a debt of such city, but solely a charge upon the pledged revenues."

---

<sup>62</sup> 11 Okl. St. Ann., Sec. 1385.4.

<sup>63</sup> 11 Okl. St. Ann., Sec. 1385.2.

So long as such revenue bonds are outstanding, no additional bonds of equal dignity shall be issued against the pledged revenue, or the pledged revenue and property, except to the extent and in the manner they expressly permit it in the ordinance, which authorizes such outstanding revenue bonds, or the Indenture.<sup>64</sup>

There is little reason to doubt that the 1949 revenue bond legislation would be able to withstand a trial in the courts. This act is not contrary to section 27, article X of the constitution. The City of Wagoner has voted revenue bonds that probably fall under the provisions of the 1949 bill. "Last Fall the city (Wagoner) voted \$300,000 in self-liquidating revenue bonds for construction of a boat basin and recreation area on a peninsula east of the city."<sup>65</sup>

#### IV. CHARACTER OF BONDS

Negotiable. As of recent years the legislature has had more of a tendency toward making municipal bonds negotiable. No doubt they realize that this characteristic of a bond greatly improves its marketability. Following are some provisions of the statutes for issuance of negotiable bonds:

The governing body of any city or incorporated town . . . shall provide by resolution for the

---

<sup>64</sup> 11 Okl. St. Ann., Sec. 1385.3.

<sup>65</sup> Tulsa Daily World, March 22, 1950, p. 28.

issuance of negotiable coupon bonds . . . .  
 (for street improvements)]<sup>66</sup>

The governing body of any such city is authorized to issue negotiable revenue bonds of the city (for recreational facilities)]<sup>67</sup>

All bonds issued hereunder (for automotive parking stations) shall have and are hereby declared to have all the qualification and incidents of negotiable instruments.<sup>68</sup>

The governing body of any such city is authorized to issue negotiable revenue bonds of the city (for docks, boat houses and boats)]<sup>69</sup>

Denomination. With few exceptions the statutes state that the denomination of municipal bonds shall be not less than one hundred dollars nor more than one thousand dollars, usually in multiples of one hundred dollars. A law of 1937 states that bonds issued for funding matured and outstanding special assessment obligations "shall be in denomination of Fifty (\$50.00) Dollars or any multiple thereof; . . . ." <sup>70</sup> The 1947 revision of a 1927 law states:

Whenever any municipal corporation, or political subdivision of the State of Oklahoma

---

<sup>66</sup> 11 O. S. Supp. 1949, Sec. 151.

<sup>67</sup> 11 Okl. St. Ann., Sec. 1373.

<sup>68</sup> 11 Okl. St. Ann., Sec. 1354.

<sup>69</sup> 11 Okl. St. Ann., Sec. 1385.2.

<sup>70</sup> 62 Okl. St. Ann., Sec. 411.

shall vote any bonds or issue any funding or refunding bonds, . . . . The demonimation (probably should read denomination) of said bonds shall be One Hundred Dollars (\$100.00) or multiples thereof, not exceeding One Thousand Dollars (1,000.00), except the last numbered bond may be for such odd amount not exceeding One Thousand Dollars (\$1,000.00), as will complete the full issue of said bonds.<sup>71</sup>

This would seem to repeal the 1937 law authorizing the issuance of funding bonds in denomination of fifty dollars.

Interest Rates. Municipalities may not issue bonds for any purpose bearing interest in excess of six per cent. The statutes says that every municipal corporation within this state "shall have power to issue and sell bonds under and by virtue of the Constitution of this State, bearing interest not to exceed six per centum per annum, . . . ."<sup>72</sup>

However, for bonds issued for certain specific purposes, the law has set a maximum interest rate of less than six per cent. Bonds for docks, boat houses, and boats,<sup>73</sup> and bonds issued by a municipal university<sup>74</sup> or Board of Education of a city<sup>75</sup> shall bear interest not to exceed

---

<sup>71</sup> 62 Okl. St. Ann., Sec. 353.

<sup>72</sup> 11 O. S. 1941, Sec. 563.

<sup>73</sup> 11 Okl. St. Ann., Sec. 1385.5.

<sup>74</sup> 11 Okl. St. Ann., Sec. 1329.

<sup>75</sup> 70 Okl. St. Ann., Sec. 200.



five per cent per annum. And bonds for recreational facilities shall bear interest at a rate of not exceeding four per cent (4%) per annum . . . .<sup>76</sup>

Maturity dates. The Constitution limits the life of any municipal bond issue to twenty-five years.

Provided, That any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by this Constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.<sup>77</sup>

A law of 1947 also states that all municipal bonds shall mature in installments. On this matter, the statutes is as follows, in part:

Whenever any municipal corporation, or political subdivision of the State of Oklahoma, shall vote any bonds or issue any funding or refunding bonds, such bonds shall mature in equal annual installments, beginning not less than two (2) nor more than five (5) years after their date, except that the last maturing installment may be for such sum not more than two (2) installments, as will complete the full issue of such bonds, notwithstanding the necessity of

---

<sup>76</sup> 11 Okl. St. Ann., Sec. 1374.

<sup>77</sup> Const. Art. X, Sec. 27.

varying the amount thereof to complete the same.<sup>78</sup>

Certain bonds must mature in less than twenty-five years. Bonds issued by a municipal university "shall mature not later than twenty (20) years from date of issuance."<sup>79</sup> Bonds for a system of electric lights for a town must mature in twenty years, but payable after the expiration of ten years at the option of the town.<sup>80</sup> Bonds for improvements of a general nature "shall be payable in not less than ten years nor more than twenty-five years, from the date of their issue."<sup>81</sup> Bonds issued for the purchase of transportation equipment by a school district "shall be made to mature within a period not to exceed ten (10) years from their date."<sup>82</sup> Optional funding or refunding bonds shall mature within twenty-five years "and shall recite that they are subject to redemption at any interest paying date."<sup>83</sup> Except as provided for in the bond contract or in the bond, a municipality may not call its bonds prior to maturity without the consent of the holders

---

<sup>78</sup> 62 Okl. St. Ann., Sec. 353.

<sup>79</sup> 11 Okl. St. Ann., Sec. 1329.

<sup>80</sup> 11 Okl. St. Ann., Sec. 1008.

<sup>81</sup> 11 Okl. St. Ann., Sec. 645.

<sup>82</sup> 70 Okl. St. Ann., Sec. 531.

<sup>83</sup> 62 O. S. 1941, Sec. 426a.

of such bonds. The Oklahoma Supreme Court stated:

Under the provisions of section 27, art. 10, Constitution, a municipality may issue its' utility bonds to mature at any time within 25 years from date, but no authority is granted to the municipality thereunder to call its bonds prior to the maturity date thereof as contained in the bond contract against the will of the owner of said bond and in the absence of an express stipulation to that effect in the bond.<sup>84</sup>

Unconditional liability of municipality. The committee on municipal obligations (National Association of Supervisors of State Banks) considers the general credit obligation, where the issuing unit agrees unconditionally to pay these obligations and interest according to the conditions of the contract, the best type of municipal obligation.<sup>85</sup> Bonds issued for county court houses, jails and public buildings "shall be of usual form and be so worded as to bind the county absolutely to the full payment of both principal and interest, . . . ."<sup>86</sup>

Interest coupons attached. Coupon bonds are easier to transfer than bonds registered as to interest and therefore have better marketability. This makes it desirable for municipal bonds to have interest coupons attached to

---

<sup>84</sup> State ex rel. R. J. Edwards, Inc. v. Keith, City Treas., 179 Okl. 563.

<sup>85</sup> Supra, p. 9.

<sup>86</sup> 19 Okl. St. Ann., Sec. 738.

the bonds. The statutes state that bonds issued for water works<sup>87</sup>, improvements of a general nature<sup>88</sup>, and street improvements<sup>89</sup> shall be coupon bonds.

#### V. SALE OF BONDS

Advertising for bids. No bonds except funding or or refunding bonds may be sold without proper advertising of the notice to receive bids on such bonds. The statutes explains the details:

When any issue of bonds, except funding or refunding bonds, aggregating Five Thousand (\$5,000.00) Dollars, or more, shall be made or ordered by any county, city, town, board of education, school district, or other political subdivision of the state, the proper officers shall, before selling such bonds cause at least ten days' notice to be given of the time and place when and where bids therefor will be received. Such notice shall be signed by the County Clerk, if issued by a county, and by the Clerk of any city, town, board of education, school district or other subdivision of the state, as the case may be, and shall be published for two successive weeks, if in a weekly newspaper, or one week, if in a daily paper. Provided, that the date mentioned in such notice for the sale of such bonds, shall not be less than ten days after the first publication thereof. All bonds shall be sold to the bidder who will pay therefor par and accrued interest, and who shall stipulate in his bid the lowest rate of interest which such bonds shall bear. And, upon the acceptance of such bid, the bonds shall be issued in accordance therewith and shall be

---

<sup>87</sup> 11 Okl. St. Ann., Sec. 294.

<sup>88</sup> 11 Okl. St. Ann., Sec. 645.

<sup>89</sup> 11 O. S. Supp. 1949, Sec. 151.

delivered to said purchaser upon payment of the purchase price thereof. Provided, that each bidder shall submit with his bid a sum in cash or its equivalent, equal to two percent of his bid, and upon the acceptance of any bid, such deposit shall become the property of the county, or municipality selling such bonds, and shall be accredited on the purchase price thereof . . . .<sup>90</sup>

Contestability of bonds. "No tender of the bond shall be valid until after the expiration of the period of contestability as now provided by law . . . ." <sup>91</sup> The period of contestability is thirty days after the issuance of the certificate of approval by the state bond commissioner. The statutes state that the bond issue "shall be incontestable in any court in the State of Oklahoma unless suit thereon shall be brought in a court having jurisdiction of the same within thirty days from the date of the approval thereof by the Bond Commissioner".<sup>92</sup>

Cannot be sold for less than par plus accrued interest.

A law passed by the 1913 session of the legislature stated clearly that all bonds sold must net the municipality par plus accrued interest. The provisions of the statutes are as follows:

---

<sup>90</sup> 62 Okl. St. Ann., Sec. 354.

<sup>91</sup> Loc. cit.

<sup>92</sup> 62 O. S. 1941, Sec. 13.

It shall be unlawful for any board of county commissioners, city council, or city commissioners, town council, township board, school district board, board of education or any other officer of any such municipal corporation, or subdivision of this state, to sell, agree to sell or contract to sell any bonds issued by a vote of the people for any sum less than par with accrued interest added, and any commission allowed any person or firm for the sale of such bonds must, after being deducted from the sum total for which said bonds are sold, leave in the treasury the sum equal to the par value and accrued interest thereof.<sup>93</sup>

The statutes also states the penalty for violations of the law as given in the above section:

Any member of any board of county commissioners, any member of any city council, or member of any board of city commissioners, any member of any town council, any member of township board, any member of any city board of education, any member of any school district board, and any other officer of any of the aforesaid political corporations or subdivisions of this state, or any other officer of any political corporation or subdivision of this state, who shall sell, or agree to sell, or contract to sell at less than par, any bond of his respective county, city, town, township, school district, or other political corporation or subdivision, shall be guilty of a misdemeanor, forfeit and be removed from office, and in addition, be liable on his official bond for the difference between the sum received and the par value of the bonds with accrued interest thereon.<sup>94</sup>

The 1913 law (cited in part above) did not state that it was the intention of the legislature to repeal the 1910 laws authorizing the sale of bonds for water works at 90%

---

<sup>93</sup> 62 O. S. 1941, Sec. 351.

<sup>94</sup> 62 O. S. 1941, Sec. 352.

of their face value<sup>95</sup> and bonds issued by a school district at 95% of their par value.<sup>96</sup> Should the point ever be questioned, it would be up to the courts to render a decision.

Premium on sale of bonds. Although the law does not allow municipal bonds to be sold at a discount, they may be sold at a premium. The law specifies the uses to which this premium may be used. The premium may be used to pay brokerage on the sale of bonds, provided "any commission allowed any person or firm must, after being deducted from the sum total for which said bonds are sold, leave in the treasury the sum equal to the par value and accrued interest thereof."<sup>97</sup> Any premium in excess of such brokerage must be credited to the sinking fund. The Oklahoma Supreme Court has said:

We think and hold that under our Constitution and taxing statutes, the accrued interest on bonds and the net premium on bonds should be credited to and held in a sinking fund for the purpose of reducing the tax levy necessary to pay the interest thereon and create a sinking fund for the retirement thereof.<sup>98</sup>

---

<sup>95</sup> 11 Okl. St. Ann., Sec. 294.

<sup>96</sup> 70 Okl. St. Ann., Sec. 525.

<sup>97</sup> 62 O. S. 1941, Sec. 351.

<sup>98</sup> Aaronson v. Smiley, 142 Okl. 35.

Uses of proceeds from sale of bonds. "All laws authorizing the borrowing of money by and on behalf of the State, county, or other political subdivision of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose."<sup>99</sup> In the Oklahoma Supreme Court case of Gulf, C. & S. F. Ry. Co. v. Excise Board of Love County<sup>100</sup> the court held that where a city issues bonds for the construction of a public utility plant, and before such bonds are retired, sells the plant; the proceeds from the sale of the plant should be used for no other purpose than for which the money was borrowed. The interest on the notes, received as part payment for the plant, must be used as far as necessary to pay the interest on the bonds and to retire the principal of the bonds.

Where there is an excess of the proceeds from the sale of bonds over the requirements, the Oklahoma Supreme Court has held:

Where the purpose for which bonds were issued has been served and there is a balance on hand derived from a sale on the bonds issued, it can be used for no other purpose and must be placed in the sinking fund for the purpose of

---

<sup>99</sup> Const. Art. X, Sec. 16.

<sup>100</sup> Gulf, C. & S. F. Ry. Co. v. Excise Board of Love County, 141 Okl. 34.



retiring, pro tanto (as far as it goes), the bonds so issued in excess of the amount needed for the purpose for which they were issued.<sup>101</sup>

## VI. ACCUMULATION OF SINKING FUND AND RETIREMENT OF BONDS

Accumulation of sinking fund. There are several ways in which a sinking fund may obtain money. The most important and the means by which the greater part of such sinking fund money is obtained is through a tax levy. It is the duty of the officers of each municipality to levy taxes each year of a sufficient amount to meet the sinking fund requirements for that year.<sup>102</sup> The method of calculating the sinking fund requirements is given in the next chapter.<sup>103</sup> The sinking fund requirements must include an amount for the payment of judgments, in addition to the principal and interest on bonds. The Oklahoma Supreme Court has stated: "In this jurisdiction judgments against a municipality are sinking fund obligations and are paid by three annual sinking fund levies, or they may be paid out of the sinking fund and the same reimbursed by three annual levies."<sup>104</sup> The tax levy for sinking fund purposes is reduced by a surplus in the building fund:

---

<sup>101</sup> re Bliss et al, 142 Okl. 1.

<sup>102</sup> 62 Okl. St. Ann., Sec. 431.

<sup>103</sup> Infra, p. 85

<sup>104</sup> Crane Co. v. Goerke, 191 Okl. 1.

When the governing board of any county, city, town or school district shall determine by proper resolution in writing that a surplus exist in any building fund created under provisions of Section Ten (10), Article Ten (10), Oklahoma Constitution, not required for the completion of the purpose for which said taxes were levied and collected, or where said proposed construction has been abandoned, said surplus shall be refunded to the taxpayers by the use thereof by the County Excise Board to reduce the tax levy for the sinking fund of the municipality for which the building fund was created. Provided, that any portion of said building fund surplus not required to eliminate a sinking fund tax levy for said municipality shall be refunded to the taxpayers by the use thereof to reduce the tax levy for the benefit of the general fund for the same municipality.<sup>105</sup>

Another source of money for the sinking fund is from delinquent tax penalties:

. . . . and in counties having an assessed net valuation in excess of \$6,800,000.00 the penalties, interest and forfeitures which accrue on delinquent ad valorem taxes on property located in any township having a bonded indebtedness of any kind, one-half of such interest, penalties and forfeitures, when normally collected, shall be paid into the sinking fund of such township, and the remaining one-half thereof in such township and all penalties, interest and forfeitures where there exist no township bonded indebtedness of any kind shall be paid into the county penalty reserve . . . . After June fifteenth of each year, the county Treasurer shall close the county penalty reserve by transferring any unencumbered balance thereof into the county sinking fund, or, if there be no sinking fund of such county, into its courthouse and jail fund . . . .<sup>106</sup>

---

<sup>105</sup> 62 O. S. Supp. 1949, Sec. 333.

<sup>106</sup> 62 Okl. St. Ann., Sec. 436.

Another source of money for the sinking fund for the payment of interest on and retirement of city hall bonds is from the rental of parts of such City Hall building. The details of this provision are as follows:

That all cities in the State of Oklahoma operating under a charter form of Government, wherein such cities may hereafter issue bonds for the purpose of raising funds to construct a City Hall building, be and are hereby required to pay into the sinking fund for the payment of interest and the retirement of such bonds so issued, all rentals so derived from the use of such parts of the City Hall Building as are not required for the use of the city, and such rentals so acquired over and above maintenance shall be irrevocably pledged for the payment of the interest and the retirement of such bonds and shall not be used for any other purpose.<sup>107</sup>

As mentioned before in the discussion of "Uses of proceeds from sale of bonds"<sup>108</sup> any excess from the sale of bonds over requirements must be credited to the sinking fund.

Surplus in sinking fund. Whenever any municipality, except a township, has accumulated a surplus in its sinking fund, such surplus may be transferred to the general fund of such municipality. But in the case of an accumulated

---

<sup>107</sup> 62 O. S. 1941, Sec. 438.

<sup>108</sup> Supra, p. 58.

sinking fund surplus by a township, it may be transferred to the county highway fund of such county for the maintenance of county roads within the township. The authority for such transfer is given by a 1943 law:

Where any county, city, town, township, or school district . . . . has accumulated a surplus in the sinking fund thereof, represented by actual cash on hand in excess of all outstanding bond or judgment indebtedness, both matured and immatured, including coupon and/or other interest earning thereon whether matured or unmatured, earned or unearned, or if there be no known bond, coupon, or judgment indebtedness outstanding against it, the county excise board on application of the proper officers thereof is hereby authorized to approve the transfer of said surplus in the sinking fund of said county, city, town, or school district to be used for general fund purposes of the same county, city, town, or school district; provided . . . . there shall be attached to such application an affidavit and proof of publication of published notice by such governing board of its intention to apply for authority to make such transfer, . . . . .  
 . . . . . Similarly a township sinking fund surplus, similarly defined may be transferred to the county highway fund of such county; but in this event, an appropriation shall be made, simultaneous with the effective order approving such transfer, equivalent to the amount of sinking fund surplus so transferred either in the highway budget account in the general fund or in the county highway cash fund, for the specific purpose of maintaining county roads in the particular township to which such sinking fund belonged.<sup>109</sup>

Where the receipts of a sinking fund, for any fiscal year, exceed the sinking fund requirements and a deficit

---

<sup>109</sup> 62 O. S. Supp. 1949, Sec. 445.

of a prior year exist, shall the surplus of the current year be applied to the deficit or carried forward to reduce the tax levy for the succeeding year? The Oklahoma Supreme Court has set out the conditions under which such surplus may be applied to the deficit and when it must be carried forward to reduce the sinking fund tax levy for the succeeding year.

The city of Ardmore had an unaccounted for surplus in the sinking fund. This case is based on whether the surplus was justifiably applied to an existing deficit in the sinking fund or should it have been applied to the reduction of ad valorem tax levy. The court stated as follows, in part:

The plaintiff in error contends that the surplus was applied to make up, in part, an existing deficit in the sinking fund. The defendant in error contends that the surplus should have been applied to the reduction of ad valorem tax for the fiscal year in question. The determination of that question is dependent upon the source from which the surplus was derived. If it was from sources other than ad valorem taxation, under the rule stated in re Protest of Chicago, R. I. & P. Ry. Co., 143 Okla. 161, 288 P.337, it may be applied toward the existing deficit in the sinking fund and need not be applied to the reduction of the rate of ad valorem taxation for the current year. On the other hand, if it was derived from the collection of ad valorem taxes, its application is dependent upon the record as to the year for which those taxes were levied. If that record shows that any portion of the existing deficit in the sinking fund was caused by a failure to collect the full amount of the taxes during that fiscal year, so much of the taxes for that year subsequently collected as is necessary to make up that deficit

may be used for that purpose. On the other hand, if there was no deficit for that fiscal year, the amount subsequently collected must be carried forward as a surplus and used to reduce the ad valorem tax for subsequent fiscal years. We are unable to determine from the record definitely the source from which the surplus was derived. If, as it appears from the record, the surplus was caused by the collection of some portion of the 10 per cent, added for delinquencies during the last preceeding fiscal year, it must be carried forward as a surplus and used to reduce the rate of taxation for the current year, and it may not be used for the purpose of reducing the existing deficit in the sinking fund. In other words, if the needs of the sinking fund for any fiscal year were fully supplied by the funds collected by ad valorem taxation for that year, whether they were collected during that year or some subsequent year, any surplus collected must be carried forward as a surplus and used to reduce the rate of ad valorem taxation for the subsequent year. On the other hand, if those needs were not satisfied by the collection during the fiscal year for which the levy was made, and a deficit in the sinking fund resulted, that deficit may be made up when the taxes for that fiscal year are subsequently collected, but if there are subsequent collections exceeding the needs for that fiscal year, then the surplus must be used to reduce the rate of ad valorem taxation and may not be used for the purpose of reducing an existing deficit in the sinking fund.<sup>110</sup>

Deficit in sinking fund. Where a deficit exists in the sinking fund the municipality is authorized by law to determine anew the sinking fund levy necessary over the remaining life of the bond issue. This is brought out in the statutes as follows, in part:

---

<sup>110</sup> Protest of Chicago, R. I. & P. Ry. Co., 164 Okl. 114.

It shall be the duty of the Officers of each municipal corporation in the State of Oklahoma by law authorized to levy taxes to make a levy each year for a sinking fund, which shall, with cash actually on hand and investments in such fund, excluding taxes in process of collection, be sufficient to pay all the bonded indebtedness of such municipality coming due during the following years; one year's interest on all outstanding bonds of such municipality; and an additional sum equal to one-third of the original amount of all outstanding judgements against the municipality, when one-third or more of such judgements remains due and unpaid, . . . . where the sinking fund does not equal the accrual liabilities, it is, in the following years, hereby authorized and empowered to make, in addition to all other levies, such tax levy as will, by the maturity dates thereof raise a fund sufficient to pay the obligations when due. . . . . When any valid bond or interest coupon of a municipality matures and there are insufficient funds on hand to pay the same, such municipality is authorized to make an additional levy in addition to all other tax levies in the next fiscal year or succeeding years, sufficient to pay said indebtedness, with interest accrued or accruing; . . . . lll

In 1942 the Texas-Empire Pipe Line Co. protested against a tax levy to eliminate a deficit in the sinking fund of school district No. 26, Tulsa county. The protest was carried to the Oklahoma Supreme Court. The decision handed down by the court stated, in part:

There is no dispute of the fact that the sinking fund does not equal the accrued liabilities. The governing board requested the levy as made. . . . . Protestant seems to take the position that a present levy is unauthorized

---

lll 62 Okl. St. Ann., Sec. 431.

because the funds produced are not actually needed for payment during the present fiscal year, not giving full force to the well-recognized statutory and constitutional provisions requiring an annual accumulation to pay the obligation when due. The statute clearly relates to deficits of accruals or accumulations and is obviously designed to allow a new start or program at any levy period, toward and in accomplishment of the original program, and there has been some failure therein.<sup>112</sup>

And in another decision handed down by the Supreme Court, which is cited in part by the State Examiners and Inspectors Office<sup>113</sup>, the court stated, in part:

Chapter 27, S. L. 1933<sup>114</sup>, authorizes the taxing officials of a municipality, where the sinking fund does not equal the liabilities, to make in the following years, in addition to all other levies, such tax levy as will so reinstate the sinking fund as to enable payment therefrom of future maturing obligations when due . . . .

The maximum deficit levy authorized in any one fiscal year, is the smallest amount necessary to provide cash to pay any and all obligations when due, and divided over the greatest number of years possible to yet effect the primary purpose of providing cash to meet obligations when due; the calculation of the amount of the levy to be made at each levy period with regard to the conditions of the sinking fund at each levy period. . . . .

We find however, that the act does not purport to fix the year when the first of such deficit levies must be made. . . . . The sole

---

<sup>112</sup> Texas-Empire Pipe Line Co. et al. v. Tulsa County, Excise Board, 191 Okl. 568.

<sup>113</sup> S. E. & I. Form 1404--1949.

<sup>114</sup> 62 Okl. St. Ann., Sec. 431.



prerequisite to the levy is that there must be, at the time such levy is sought to be made, a deficit in the sinking fund.<sup>115</sup>

Uses of sinking fund. The money in a sinking fund is accumulated for the purpose of paying interest and principal of bonded indebtedness as it becomes due and payable, and for the payment of money judgments against the municipality. This fact is stated in the State Constitution:

Counties, townships, school districts, cities, and towns shall levy sufficient additional revenue to create a sinking fund to be used, first, for the payment of interest coupons as they fall due; second, for the payment of bonds as they fall due; third, for the payments of such parts of judgments as such municipality may, by law, be required to pay.<sup>116</sup>

The Constitution also specifies that funds collected from taxes levied for sinking fund purposes shall not be used for any other purpose.

Every act enacted by the Legislature, and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body, levying a tax shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.<sup>117</sup>

---

<sup>115</sup> LeFlore County, Excise Board, v. St. Louis-San Francisco Railway Co. et al., 185 Okl. 440.

<sup>116</sup> Const. Art. X, Sec. 28.

<sup>117</sup> Const. Art. X, Sec. 19.

The Supreme Court has held that when sufficient funds have been accumulated to retire a matured bond it shall be retired. This is explained in the Supreme Court case of Town of Shattuck et al. v. Barcafer. Barcafer held a \$500.00 bond issued by the town of Shattuck which had matured some six years previous. This bond was next in line for retirement. The sinking fund had accumulated the sum of \$653.00 which was insufficient to pay the \$500.00 face of the bond and accumulated interest. However, Barcafer agreed in open court to accept the sum on hand in full satisfaction of the bond. Justice Gibson stated:

No issue is made of the fact that the amount so accumulated was less than the sum due on the bond. And we are aware of no reason why the agreement of the bondholder to accept a lesser amount should not satisfy the statutory provision that the bonds be retired "upon the accumulation of sufficient funds . . . . to pay one or more bonds".<sup>118</sup>

---

<sup>118</sup> Town of Shattuck et al. v. Barcafer, 192 Okl. 336.

## CHAPTER IV

### ACCOUNTING AND FINANCIAL PROBLEMS

The actual mechanics of accounting entries, the calculations for the issuance of bonds and for the accumulation of a sinking fund will be discussed in this chapter. The discussion will cover both the methods outlined by the law and those practiced by certain municipalities in this state.

Accounting for issuance of bonds. The city of Perry does not print its bonds until they have been sold. After the bonds have been printed and delivered to the treasurer, they are registered in the "Bond Register". Illustration 2 shows a sample page from the Bond Register of the city of Perry.

When the bonds are sold, the par of the bonds are credited to a special fund. For example, when the Sewer Plant Bonds of 1946 were sold for \$95,301.39, the par of \$95,000.00 was credited to the Sewer Plant Fund. The premium of \$301.39 was credited to the New Sinking Fund. The Hospital Bonds of 1949 were sold for \$200,509.17. The par of \$200,000.00 was credited to the Hospital Fund and the \$509.17 was credited to the New Sinking Fund. The city of Perry does not amortize the premium from the sale of bonds; it uses the premium to reduce the amount of the

Register of Hospital Bond, of 1949

No. of Bond 1. For What Purpose Issued Hospital

Date of Bond 4-1-49 Rate of Interest 2 Percent Semi-Ann.

Amount of Bond \$1,000.00 Payable at 1st. Nat B. & Tr. Okl. City

No. of Coupons 3 Payable to Bearer

When Due 4-1-51

Payment of Interest Coupons Semi Annually

No. of Coupons	Amount of Coupons		When Issued			When Due		
	Dollars	Cents	Month	Day	Year	Month	Day	Year
1	20	00	Apr.	1	1949	Apr.	1	1950
2	10	00				Oct.	1	1950
3	10	00				Apr.	1	1951

When Paid			Amount Paid		Remarks
Month	Day	Year	Dollars	Cents	

Illustration 2.

SAMPLE PAGE FROM BOND REGISTER OF CITY OF PERRY.

first tax levy for sinking fund purposes.

Budgetary and accounting controls for the accumulation of sinking funds and retirement of bonds. After the bonds are sold and delivered, the number of years in which a tax may be levied to accrue a sufficient fund to retire the bonds as they mature must be determined. The state examiners and inspectors office gives the following methodology and authority for calculating sinking fund accruals for bonds.

A levy for Sinking Fund accrual should be made equally each year. It is necessary to divide the total amount represented in such bond issue by the number of tax-paying years between date and retirement of said issue. 125 Okla. Page 183. Where the date of maturity during a fiscal year is prior to the 15th day of June, the number of tax levies should be one less than the number of fiscal years intervening between the date of issuance and the date of the bond. If the date of maturity during a fiscal year is on or after the 15th day of June (between June 15th and June 30th) then the number of levies should be the number of fiscal years intervening between the date of issuance and date of maturity of the bonds. 151 Okla. Page 74.

Change this rule to April 1 instead of June 15.  
(Tax Court)<sup>1</sup>

For a twenty year bond issue maturing between April 1st and June 30th inclusive, the number of levies for sinking fund accrual would be twenty. If the bonds mature at any other date, the number of levies would be nineteen. By

---

<sup>1</sup> S. E. & I. Form 1404--1949, p.6.

reference to Illustration 3 it is seen that the Sewer Plant Bonds of 1946, of the city of Perry, Oklahoma, maturing on October 15th, have a life of 18 years; the total tax paying years are 17. The Hospital Bonds of 1949, maturing on April 1st have a life of 11 years; the total tax paying years are 11. But with the Water Extension and Improvement Bonds of 1946, the city has departed from the above rule. These bonds mature October 15th and have a life of 12 years. The number of levies should be 11, but the city has set up the annual accruals for 10 years. And also they are accruing only \$8,100.00 annually which is less than 1/10th of the \$87,000.00 bond issue. If the city is anticipating other revenues to make up the difference, this is contrary to the statutes and court decisions.

In determining the amount to be raised by ad valorem taxation for a sinking fund there can be no deduction made for estimated receipts from sources other than ad valorem taxation.<sup>2</sup>

In addition to the annual accrual for bonds, there should be an annual accrual to provide for the payment of interest falling due after the last tax paying year. That is, interest on the amount of the final maturity of the issue which matures during a fiscal year prior to April 1st,

---

<sup>2</sup> Gulf v. Love County, 141 Okl. 34.

SINKING FUND SCHEDULES AND ACCOUNTS COVERING DETAIL OF BONDED INDEBTEDNESS OUTSTANDING AS OF JUNE 30, 1949, NOT AFFECTING HOMESTEADS

OBLIGATIONS INCURRED SUBSEQUENT TO JAN. 8, 1937 FOR WHICH TAX EXEMPT HOMESTEADS ARE NOT LIABLE WITH NEEDS FOR ANNUAL ACCRUED THEREON, AND NEEDS FOR INTEREST EARNINGS ACCRUED AND ACCRUING THEREON.

	Airport Bonds of 1942	Sewer Plant Bonds of 1946	Water Extension and Improvement Bonds of 1946	Main Sewer Line Bonds of 1946	White Way Electric System Bonds of 1946	Storm Sewer Bond of 1946	The Hospital Bonds of 1949	Total
Issue Date	10-1-42	10-15-46	10-15-46	10-15-46	10-15-46	10-15-46	4-1-49	
First Maturity - Date		10-15-49	10-15-49	10-15-49	10-15-49	10-15-49	4-1-51	
First Maturity - Amount		6,000.00	9,000.00	4,000.00	4,000.00	4,000.00	20,000.00	
Last Maturity - Date	10-1-52	10-15-69	10-15-58	10-15-58	10-15-56	10-15-58	4-1-60	
Last Maturity - Amount	10,000.00	6,000.00	15,000.00	6,000.00	5,000.00	5,000.00	20,000.00	
Amount of Original Issue	70,000.00	95,000.00	87,000.00	42,000.00	33,000.00	37,000.00	200,000.00	
Total Tax Paying Years	9	17	10	11	9	11	11	
Annual Accruals	-0-	5,625.00	8,100.00	3,818.18	3,665.67	3,600.00	18,181.81	42,991.66
Tax Years Run		2	2	2	2	2	0	
Total Accruals	-0-	11,250.00	16,200.00	7,636.36	7,333.34	7,200.00	-0-	49,619.70
Bonds Paid Prior to 6-30-1948	20,000.00	0	0	0	0	0	0	
Bonds Paid During 1948-49	10,000.00	0	0	0	0	0	0	
Date Coupons Mature 1st half (July 1 to Dec. 31)		10-15	10-15	10-15	10-15	10-15	4-1	
Total Bonds Outstanding June 30, 1949	40,000.00	95,000.00	87,000.00	42,000.00	33,000.00	37,000.00	40,000.00 @ 1½%	534,000.00
Rate of Interest	1½	2	2	2	2	2	160,000.00 @ 2%	
Current Interest Earnings 7-1-49 to 6-30-1950	525.00	1,840.00	1,650.00	800.00	620.00	700.00	3,900.00	10,035.00
Total Interest Need to Levy for 1949-50	525.00	1,840.00	1,650.00	800.00	620.00	700.00	3,900.00	10,035.00
Interest Earned During Current Fiscal Year	687.50	1,900.00	1,740.00	840.00	660.00	740.00	None	6,567.50
Coupons Paid During Current Fiscal Year	687.50	1,900.00	1,740.00	840.00	660.00	740.00	None	6,567.50

Illustration 3

DETAIL OF BONDED INDEBTEDNESS OF CITY OF PERRY OUTSTANDING AS OF JUNE 30, 1949 NOT AFFECTING HOMESTEADS

(The vertical designation and columnar headings are the reverse of that in S. E. & I. Form 1404)

DETAIL OF BONDED INDEBTEDNESS OUTSTANDING AS OF  
 JUNE 30, 1949 AFFECTING HOMESTEADS WITH NEEDS FOR ANNUAL  
 ACCRUAL THEREON, AND NEEDS FOR INTEREST EARNINGS ACCRUED  
 AND ACCRUING THEREON

Water Works Extension Bond of 1936

Issue Dated	10-1-36
Last Maturity - Date	10-1-56
Last Maturity - Amount	\$ 7,000.00
Amount of Original Issue	\$ 118,000.00
Amount Sold and Delivered	\$ 118,000.00
Total Tax Paying Years	19
Annual Accruals	\$ 6,210.53
Tax Years Run	12
Total Accruals	\$ 74,526.36
Bonds Paid Prior to 6-30-48	\$ 56,000.00
Bonds Paid During 1948-49	\$ 7,000.00
Net Balance of Accruals 6-30-49 In Unmatured Bonds	\$ 11,526.36
Date Coupons Mature 1st Half	10-1
Total Bonds Outstanding 6-30-49	\$ 55,000.00
Current Interest Earnings - 7-1-49 to 6-30-50	\$ 1,781.25
Total Interest Need to Levy for 1949-50	\$ 1,781.25
Interest Earned During Current Fiscal Year	\$ 2,043.75
Coupons Paid During Current Fiscal Year	\$ 1,912.50
Bal. Interest Earned Prior to 6-30-49 Still Unpaid:	
In Matured Coupons	\$ 131.25
In Unmatured Coupons	None

Illustration 4

DETAIL OF BONDED INDEBTEDNESS INCURRED PRIOR TO JAN. 8, 1937  
 CITY OF PERRY, OKLAHOMA.



because a tax cannot be levied and collected for that year. The state examiners and inspectors office suggest the following rule:

Interest accruing between the end of the last fiscal year in which a tax levy may be made and collected, and the date of maturity of the bonds, may be provided for by dividing the amount thereof by the number of fiscal years in which a tax levy may be made and collected, and by providing for the accumulation of that amount during each of such years, 165 Okl. 90.<sup>3</sup>

In addition to the annual accruals for bonds and interest a levy must be made to provide for the interest accruing in the fiscal year for which a levy is made. It is immaterial in which fiscal year the interest coupons mature, it is the interest that is earned during the fiscal year that is levied for. On this matter, the state examiners and inspectors office quotes from a supreme court decision as follows:

The date of maturity of an interest coupon is to be disregarded in determining the amount necessary to be raised by ad valorem tax for the purpose of paying interest, and the amount of interest to be provided for being the amount of interest that will be earned during the fiscal year. Interest accruing between the end of the last fiscal year in which a tax levy may be made and collected, and the date of maturity of the bonds may be provided for by dividing the amount thereof by the number of fiscal years

---

<sup>3</sup> S. E. & I. Form 1404 --1949, p.6.

in which a tax levy may be made and collected, and by providing for the accumulation of that amount during each of such years, 165 Okla. 90.<sup>4</sup>

Also a levy should be made to provide for the payment of: judgments, as explained in chapter three,<sup>5</sup> commission to fiscal agency, explained later<sup>6</sup> and an annual accrual to provide for any deficit in the sinking fund. On this latter point, the Oklahoma Supreme Court has ruled:

Chapter 27, S.L. 1933<sup>7</sup>, authorizes the taxing officials of a municipality, where the sinking fund does not equal the liabilities, to make in the following years, in addition to all other levies, such tax levy as will so reinstate the sinking fund as to enable payment therefrom of future maturing obligations when due.<sup>8</sup>

The law requires the proper accounting of all funds.

The Constitution states:

The Legislature shall require all money collected by taxation, or by fees, fines, and public charges of every kind, to be accounted for by a system of accounting that shall be uniform for each class of accounts, State and local, which shall be prescribed and audited by authority of the State.<sup>9</sup>

---

<sup>4</sup> Loc. cit.

<sup>5</sup> Supra, p. 65.

<sup>6</sup> Infra, p. 77.

<sup>7</sup> 62 O. S. 1941, Sec. 431.

<sup>8</sup> Le Flore County, Excise Board v. St. Louis-San Francisco Railway Co. et al., 185 Okl. 440.

<sup>9</sup> Const. Art. X, Sec. 30.

As to the duties of the treasurer, the Statutes state that:

The treasurer of every incorporated town shall so keep his accounts as to show where and from what source all moneys paid him have been derived, and to whom and when such moneys or any part thereof have been paid.<sup>10</sup>

The treasurer of Perry keeps a book in which he records all cash receipts of the sinking funds. Illustration 5 shows the sinking funds receipts for the fiscal year 1948-49. Similar records are kept for all funds. It is from this record that the information regarding receipts is taken for the monthly treasurers report. The disbursements are taken from the warrants register. Illustration 6 shows that portion of the treasurers report on sinking funds.

Bonds and interest coupons are paid as they mature upon presentation at the place designated, usually stated upon the bond, from funds provided by the issuing municipality. Thirty days before any bonds or interest coupons mature, the city of Perry, Oklahoma is required to deposit this amount with their fiscal agency, the First National Bank and Trust Company of Oklahoma City. The commission charged by the fiscal agency of Perry is one-tenth of one percent for bonds and one-fourth of one percent for interest coupons.

---

<sup>10</sup> 11 O. S. 1941, Sec. 1026.

## ADDITIONS TO SINKING FUNDS

		Old Sinking Fund	New Sinking Fund
<u>1948</u>			
July 7	Transferred from Old Sinking Fund (Deposited in Error to Old Sinking Fund)		699.03
21	Fines and County Warrants	27.29	127.96
Aug. 16	County Warrants	55.65	333.15
Sept. 1	U. S. Govt. Warrants (Interest on Bonds)		750.00
4	County Warrants	50.85	272.42
Oct. 11	County Warrants	59.34	65.12
Nov. 10	County Warrants	76.46	374.96
Dec. 7	U. S. Govt. Warrants (Interest on Bonds)	15.66	76.02
<u>1949</u>			
Jan. 10	County Warrants	1,670.02	6,105.66
Feb. 9	County Warrants	3,736.51	12,941.26
28	U. S. Govt. Warrants (Interest on Bonds)		750.00
Mar. 10	County Warrants	1,243.49	4,027.23
Apr. 15	County Warrants	713.44	2,912.32
May 12	County Warrants	235.16	991.00
	Premium on Hospital Bonds of 1949		509.17
June 4	County Warrants	176.59	804.05
		<u>8,060.46</u>	<u>31,739.35</u>

## Illustration 5

TREASURERS RECORD OF CASH RECEIPT OF SINKING FUND,  
CITY OF PERRY, FISCAL YEAR ENDING JUNE 30, 1949.

CITY OF PERRY, OKLAHOMA  
 TREASURER'S MONTHLY REPORT  
 For Month of March 1950

FUNDS	BALANCE LAST REPORT	RECEIVED	PAID OUT	BALANCE ACCOUNT	
				Dr.	Cr.
Sinking Fund (old)	\$5,221.36	\$4,569.19			\$ 9,790.55
Sinking Fund (new)	9,027.04	29,748.93			38,775.97
CASH					
1st Nat B & Tr Fiscal Agency			\$7,639.06	\$7,639.06	
INVESTMENT FUNDS					
<p>I, _____ Treasurer of the City of Perry, Oklahoma,          hereby certify that the above is a true and correct statement          of funds as shown by the records of my office from the close          of business <u>Feb 28, 1950</u> to <u>March 31, 1950</u>.</p>					
				_____ City, Treasurer	

Illustration 6

EXTRACTION FROM MONTHLY TREASURER'S REPORT.

At the close of the fiscal year the treasurer has several reports and statements to prepare which are used to complete, in part, S. E. & I. Form 1402 for a city or town and Form 1404 for an independent school district. Illustration 7 to 10 are reproductions in part of exhibits in S. E. & I. Form 1402--1949, 1949-1950 Estimate of Needs and Financial Statement of the Fiscal Year 1948-49 for the city of Perry, Oklahoma which deal with the sinking funds and bonds.

Reference has been made to the old and new sinking funds without distinguishing between the two. In 1935, an amendment to the Oklahoma Constitution was approved by a vote of the people which provided for exemption of homesteads from ad valorem taxation except for obligations incurred prior to the effective date of the amendment, January 8, 1937.

All homesteads as is or may be defined under the Laws of the State of Oklahoma for tax exemption purposes, may hereafter be exempted from all forms of ad valorem taxation by the Legislature; provided, that all assessments, levies, encumbrances and other contract obligations incurred or made prior to the taking effect of such act of the Legislature shall in no way be affected or impaired by the exercise of Legislative power as authorized by this amendment.

State question No. 201, Initiative Petition No. 138. Adopted September 24, 1935.<sup>11</sup>

---

<sup>11</sup> Const. Art. XII-A, Sec. 1

## SINKING FUND BUDGET 1949-50

Provision Accounts	Including Homesteads		Excluding Homesteads	
	Estimated by Governing Board	Provided by County Excise Board	Estimated by Governing Board	Provided by County Excise Board
Interest Earnings on Bonds	\$1,781.25	\$1,781.25	\$10,035.00	\$10,035.00
Annual Accrual on Bonds	6,210.53	6,210.53	42,991.66	42,991.66
Annual Accrual on "Prepaid" Judgments				
Annual Accrual on Other Judgments				
Interest on Judgments				
Commission to Fiscal Agency	50.00	50.00	125.00	125.00
Deficit - Annual - On Matured Bonded Debt				
Deficit - Balance Due on Matured Judgments				
Deficit Accruals - Annual Requirement to Maturity				
<b>TOTAL SINKING FUND</b>	<u>\$8,041.78</u>	<u>\$8,041.78</u>	<u>\$53,151.66</u>	<u>\$53,151.66</u>

Illustration 7.

SINKING FUND BUDGET OF CITY OF PERRY,  
FOR FISCAL YEAR 1949-50.

STATEMENT OF CASH ACCOUNTS, RECEIPTS, DISBURSEMENTS  
AND BALANCES WITH THE FISCAL CONDITION OF THE SINKING  
FUND OF MUNICIPALITY OF PERRY, NOBLE COUNTY, OKLAHOMA

ON JUNE 30, 1949

Section 1. Cash	Pre- Homestead Sinking (Old)	Post- Homestead Sinking (New)
Cash Balance on Hand, June 30, 1948	\$13,163.09	\$18,646.57
Investments since Liquidated	<u>                    </u>	<u>                    </u>
Apportionments since made:		
1944 and Back Ad Valorem Tax	30.18	21.82
1945 Ad Valorem Tax	25.25	18.70
1946 Ad Valorem Tax	3.75	3.53
1947 Ad Valorem Tax	238.56	1,253.09
1948 Ad Valorem Tax	7,777.20	27,769.37
Hospital Bonds		509.17
Other		1,450.16
Total Apportionments	<u>\$ 8,074.94</u>	<u>\$31,025.84</u>
Total Balance Apportion- ments, etc.	<u>\$21,238.03</u>	<u>\$49,672.41</u>
DISBURSEMENTS		
Interest Coupons Paid	\$ 1,912.50	\$ 6,567.50
Interest Paid on Post-Due Coupons	7,000.00	10,000.00
Commission Paid to Fiscal Agency	26.54	11.70
Total Disbursements	<u>\$ 8,939.04</u>	<u>\$16,579.20</u>
Assets: 1. Cash Balance on Hand June 30, 1949	<u>\$12,298.99</u>	<u>\$33,093.21</u>
2. Investment Balance, Same Date		<u>60,000.00</u>
Total Assets Exclusive of Uncollected Tax	\$12,298.99	\$93,093.21
Deduct Total Accrued Liabilities and Reserves	<u>11,657.61</u>	<u>89,619.70</u>
Cash Surplus to Apply on Ensuing Year's Requirements	\$ 641.38	\$ 3,473.51

Illustration 8.

STATEMENT OF SINKING FUND CASH OF CITY OF PERRY, FISCAL YEAR  
1948 - 1949.



## Section 2. BALANCE SHEET

ASSETS	1. Pre-Homestead Sinking			2. Post-Homestead Sinking		
	1. Item	2. Bal. of Assets Over Each Item of Liabilities and Reserves	3. Deficit by Items	1. Item	2. Bal. of Assets Over Each Item of Liabilities and Reserves	3. Deficit by Items
Total Assets		\$12,298.99			\$93,093.21	
Add: Net Bal. Cur. Tax in Process of Collec.						
Total Balance Sheet Assets to Determine Conditions		\$12,298.99			\$93,093.21	
LIABILITIES						
Matured Unpaid Coupons	\$ 131.25					
RESERVES						
Accrual on Unmatured Bonds	\$11,526.36			\$49,619.70		
Airport Bonds		\$ 641.38		40,000.00	\$ 3,473.51	
Total Liabilities and Reserves	\$11,657.61	<u>Not Extended</u>		\$89,619.70	<u>Not Extended</u>	
Surplus of All Assets Over Liabilities and Reserves		\$ 641.38			\$ 3,473.51	

Illustration 9.

SINKING FUND BALANCE SHEET, CITY OF PERRY, JUNE 30, 1949.

11-10-1949-0231

COUNTY EXCISE BOARDS APPROPRIATIONS OF INCOME  
AND REVENUES FOR FISCAL YEAR ENDING JUNE 30, 1950

	New Sinking Fund Excluding Homesteads	Old Sinking Fund Including Homesteads
To Finance approved Budget In Sum of	\$53,151.66	\$ 8,041.78
APPROPRIATIONS OTHER THAN 1949 TAX		
Surplus Cash on Hand	3,473.51	641.38
Interest U. S. Bonds	1,000.00	
TOTAL ITEMS APPROPRIATED OTHER THAN 1949 TAX	4,473.51	641.38
Balance Required to Raise	48,678.15	7,400.40
Add 10% for Delinquent Tax	4,867.82	740.04
GROSS BALANCE OF REQUIREMENTS APPROPRIATED		
From 1949 Ad Valorem Tax	<u>53,545.97</u>	<u>8,140.44</u>
Assessed Valuation	<u>\$2,078,424.00</u>	<u>\$2,938,205.00</u>
Rate of Levy Required to Finance 1949-50 Appropriations	<u>25.76 Mills</u>	<u>2.77 Mills</u>

Illustration 10

COUNTY EXCISE BOARDS APPROPRIATIONS FOR  
CITY OF PERRY, FOR FISCAL YEAR ENDING JUNE 30, 1950.

Sinking funds accumulated on account of indebtedness incurred prior to January 8, 1937 is referred to as the "Old Sinking Fund". And sinking funds accumulated to retire indebtedness incurred subsequent to January 8, 1937 is referred to as the "New Sinking Fund". The method of determining the sinking fund requirements is the same for both funds. The only difference is in the levying of ad valorem taxes. Taxes for the old sinking fund are levied on total assessed valuation and taxes for the new sinking fund are levied on total assessed valuation less homestead exemptions.

Calculations of sinking fund requirements each year.

A budget worksheet similar to Illustration 7 will facilitate the calculations of the sinking fund requirements. As an aid in the determination of the amounts of the first two items of the budget, Interest Earnings on Bonds and Annual Accrual on Bonds, worksheets similar to Illustrations 3 and 4 should be prepared annually. Item three of the budget, Annual Accrual on "Prepaid" Judgments, is one-third of the amount of any judgment paid out of the sinking fund by a single disbursement. The Oklahoma Supreme Court has stated that:

Judgments against a municipality are sinking fund obligations and are paid by three annual sinking fund levies, or they may be paid out of the sinking fund and the same reimbursed by three annual levies.<sup>12</sup>

---

<sup>12</sup> Crane Co. v. Goerks, 191 Okl. 1.

Item four of the budget, Annual Accruals on Other Judgments, would be determined in accordance with 62 Okl. St. Ann., Sec. 431 quoted in chapter three.<sup>13</sup> The remaining items of the budget are self-explanatory.

The calculations of the sinking fund requirements could probably be best explained by means of an example. It will be assumed that the following conditions exist regarding the bonds outstanding and sinking fund of the City of X. as of June 30, 1948:

Amount of Original Issue	\$100,000.00
Date of Issue	12-31-34
Date of First Maturity	12-31-38
Bonds Outstanding June 30, 1948	\$ 50,000.00
Annual Maturity	5,000.00
Rate of Interest	4%
Final Maturity Date	12-31-57
\$3,000.00 judgment paid from sinking fund on May 15, 1946.	
\$6,000.00 judgment handed down against the city on June 1, 1947 (to be paid from three annual levies).	
On June 30, 1948, it is found that the total accruals are \$900.00 less than the total accrual of liabilities.	

The sinking fund requirements for the fiscal year 1948-1949 is calculated as follows:

Interest Earnings on Bonds:		
Current interest earnings:		
\$50,000 @ 4%, 6-30-48 to 12-31-48		\$1,000.00
45,000 @ 4%, 1-1-49 to 6-30-49		900.00
Annual-accrual of interest earnings		
6-30-57 to 12-31-57		100.00
		<u>100.00</u>
		\$2,000.00

<sup>13</sup> Supra, p. 65.

Commission to Fiscal Agency	9.75
Annual Accrual on Bonds 1/19 x \$100,000	5,263.16
Annual Accrual on "Prepaid" Judgments 1/3 x \$3,000.00	1,000.00
Annual Accrual on Other Judgments 1/3 x \$6,000.00	2,000.00
Deficit Accruals-Annual Requirements to Maturity 1/9 x \$900.00	<u>100.00</u>
<b>TOTAL REQUIREMENTS</b>	<b><u><u>\$10,372.91</u></u></b>

Assuming the following assessed valuations: Total valuation including homesteads \$3,578,307. Assessed valuations of homesteads \$820,210.

	NEW SINKING FUND	OLD SINKING FUND
Sinking fund requirements	\$ 3,000.00	\$ 7,372.91
Add 10% for Delinquent Tax	<u>300.00</u>	<u>737.29</u>
<b>TOTAL TO LEVY FOR</b>	<b><u><u>\$ 3,300.00</u></u></b>	<b><u><u>\$ 8,110.20</u></u></b>
Assessed Valuations	<u><u>\$2,758,097.00</u></u>	<u><u>\$3,578,307.00</u></u>
Levy in Mills	<u><u>1.1965</u></u>	<u><u>2.2666</u></u>

## CHAPTER V

### APPRAISAL AND CRITICISM OF STATE PROCEDURE AND LAW

Oklahoma Municipal Law is designed to protect the taxpayer against excessive and burdensome tax levies for the payment of interest on and retirement of bonds. The governing board of a municipality may not incur an indebtedness in excess of the income and revenue provided for the current year without the assent of the taxpayers at an election.<sup>1</sup> Except for the acquisition of public utilities, the taxpayers may not authorize an indebtedness that would cause total indebtedness to exceed 5% of the assessed valuation of the taxable property within the municipality.<sup>2</sup> To secure the lowest possible interest rates, notice by publication must be given of the time and place where bids will be received for the sale of the bonds. The bonds must be sold to the bidder "who will pay therefor par and accrued interest, and who shall stipulate in his bid the lowest rate of interest which such bonds shall bear".<sup>3</sup> To reduce the tax levy, sinking fund money not needed for immediate use may be invested in U. S. Bonds and the interest used to reduce the sinking fund levy.<sup>4</sup>

---

<sup>1</sup> Const. Art. X, Sec. 26.

<sup>2</sup> Const. Art. X, Sec. 26 and 27.

<sup>3</sup> 62 Okl. St. Ann., Sec. 354.

<sup>4</sup> 62 Okl. St. Ann., Sec. 348.1.

The law provides many safe-guards against bonds being issued contrary to the Constitution and the Statutes. Before the bonds may be sold, they must bear the certificate of approval of the county attorney<sup>5</sup> and the state bond commissioner.<sup>6</sup> The law also requires notices to be published in advance of elections to authorize a bond issue and date bonds are to be submitted to the court for approval. Being so notified interested persons may protest against illegal action attempted by a municipality.

Oklahoma Law also has provisions for the protection of the bondholders. To assure that funds will be available, for the payment of interest as it falls due and for the retirement of the bonds as they mature, the law states:

Counties, townships, school districts, cities, and towns shall levy sufficient additional revenue to create a sinking fund to be used, first, for the payment of interest coupons as they fall due; second, for the payment of bonds as they fall due; third, for the payment of such parts of judgments as such municipality may, by law, be required to pay.<sup>7</sup>

. . . . no tax levied and collected for one purpose shall ever be devoted to another purpose.<sup>8</sup>

---

<sup>5</sup> 62 Okl. St. Ann., Sec. 358.

<sup>6</sup> 62 Okl. St. Ann., Sec. 13.

<sup>7</sup> Const. Art. X, Sec. 28.

<sup>8</sup> Const. Art. X, Sec. 19.

The financial statement and estimate required by the provisions of section 9695 and 9698, C. O. S. 1921, must be published as therein provided, and an appropriation may be made for only those items for which estimates have been made and published, but this rule has no application to appropriations and rates of levy for sinking fund purposes.<sup>9</sup>

On several points Oklahoma Law relating to Bonds and Sinking Funds is contrary to the recommendations of the National Committee on Municipal Accounting and other recognized authorities. Oklahoma Law says that a sinking fund must be accumulated for the payment of interest and principal of bonds and for the payment of judgments against the municipality.<sup>10</sup> The National Committee on Municipal Accounting states that:

Sinking funds should be created to retire the principal only of term bonds and other bonds specified to be retired from the fund. Some Municipalities may levy a tax for the payment of the current year's serial bonds and interest requirements. This may even be defined by statute as a sinking fund levy. However, it does not come within the meaning of the term as used by the COMMITTEE, and such serial bond redemption should be made through the General fund or a Special Revenue fund.<sup>11</sup>

And Chatters and Tenner say:

---

<sup>9</sup> Commerce Trust Co. v. Morris, Co. Treas., 157 Okl. 127.

<sup>10</sup> Supra, p. 67.

<sup>11</sup> The National Committee on Municipal Accounting, Bulletin No. 6, Municipal Accounting Statements, p. 112, 113. The National Committee on Municipal Accounting, 1936.



A SINKING fund is established to accumulate resources for the retirement of bonds. The fund is not to be used for the payment of interest. The interest on both term and serial bonds, as well as the principal of serial bonds, should be paid through the general fund or a special revenue fund.<sup>12</sup>

There is a wide variety of opinion of the proper handling of premium on the sale of municipal bonds. The Oklahoma Supreme Court has held that the net premium on the sale of bonds should be credited to the sinking fund.<sup>13</sup> According to Morey and Hackett:

It is a frequent practice to expend the exact proceeds of a bond issue for the purpose for which the bonds were issued . . . .

Another method is to apply any premium received to a reduction in the bonds payable. Under this plan, the amount of the premium would be transferred to the fund out of which the bonds are to be paid, and retained there until it can be so applied.<sup>14</sup>

The National Committee on Municipal Accounting recommends that:

Premium on bonds sold should be first recorded in the accounts of the Bond Fund.

<sup>12</sup> Carl H. Chatters and Irving Tenner, Municipal and Governmental Accounting, p. 117. New York: Prentice-Hall, Inc., 1947.

<sup>13</sup> Supra, p. 57.

<sup>14</sup> Lloyd Morey and Robert Phillip Hackett, Fundamentals of Governmental Accounting, p. 242, 243. New York: John Wiley & Sons, Inc., 1942.

Subsequently they should be transferred to the General fund and applied to the payment of bond interest.<sup>15</sup>

In some situations it appears that municipal officials are not acting in strict accordance with the law. An apparent deviation from the law has been found in the handling of ad valorem tax penalties and determination of the levy for annual sinking fund accrual on bonds.

The Oklahoma Statutes state that one-half of the penalties on delinquent ad valorem taxes, on property located in a township having a bonded indebtedness of any kind in a county having an assessed net valuation in excess of \$6,800,000.00, when collected shall be paid into the sinking fund of such township. The other one-half of such penalties goes to the county penalty reserve fund which is closed out to the county sinking fund.<sup>16</sup> Such penalties received by the cities of Perry, Oklahoma, and Stillwater, Oklahoma, are credited to the Street Paving Repair Fund.

The Oklahoma Supreme court has stated that the levy for an annual sinking fund accrual is determined by dividing the total amount of the issue by the number of tax-paying years between date of bonds and date of retirement

---

<sup>15</sup> The National Committee on Municipal Accounting, op. cit., p. lll.

<sup>16</sup> Supra, p. 60.

of the bonds.<sup>17</sup> The city of Perry issued Water Extension and Improvement Bonds in the amount of \$87,000.00 on October 15, 1946. The last maturity date is October 15, 1958. According to the rule set forth by the Oklahoma Supreme Court,<sup>18</sup> there would be 11 tax-paying years for a 12 year bond issue dated during a fiscal year prior to April 1st. The levy for annual accrual would be \$87,000.00 divided by 11 which is \$7,909.09. By reference to Illustration 3 it is seen that they have set up the number of tax-paying years as 10 and an annual accrual of \$8,100.00. Even if 10 were the correct number of tax-paying years they did not calculate the annual accrual according to law.

---

<sup>17</sup> Supra, p. 71.

<sup>18</sup> Loc. cit.

## BIBLIOGRAPHY

### A. BOOKS

- Bastable, C. F. Public Finance. London: Macmillan and Company, 1927.
- Chatters, Carl H., and Tenner, Irving. Municipal and Governmental Accounting. New York: Prentice-Hall, Inc., 1947.
- Essex, Don L. Bonding Versus Pay-As-You-Go In The Financing of School Buildings. New York: Bureau of Publications, Teachers College, Columbia University, 1931.
- Morey, Lloyd, and Hackett, Robert Phillip. Fundamentals of Governmental Accounting. New York: John Wiley & Sons, Inc., 1942.

### B. LEGAL REFERENCES

- Official Edition of Oklahoma Statutes Cumulative Supplement, 1949, St. Paul: West Publishing Co., 1949.
- Oklahoma Reports. Oklahoma City: Harlow Publishing Company
- Oklahoma Statutes, 1941. St. Paul: West Publishing Company, 1942.
- Oklahoma Statutes Annotated, Permanent Edition. St. Paul: West Publishing Company, 1937. 25 volumes.
- Oklahoma Statutes Annotated, Permanent Edition, 1949 Cumulative Annual Pocket Supplement. St. Paul: West Publishing Company, 1949.
- Official Session Laws 1947. Guthrie, Oklahoma: Co-Publishing Company, 1947.

### C. MAGAZINES

- Commission on Economic Study of Milwaukee. "The Issue of City Borrowing." The American City, LXIV (January, 1949), 85.
- Klegerman, M. H. "How to Pay for Sewerage Projects." The American City, LXV (January, 1950), 87.

Mullen, James. "Validity of Revenue Bond Financing in Oklahoma." # Oklahoma Law Review, II (November, 1949), 522-526.

#### D. NEWSPAPERS

Tulsa Daily World, March 22, 1950, p.28.

#### E. PUBLICATIONS

National Committee on Municipal Accounting. Bulletin No. 4, Municipal Accounting Terminology. Chicago: National Committee on Municipal Accounting, 1936.

National Committee on Municipal Accounting. Bulletin No. 6, Municipal Accounting Statements. Chicago: National Committee on Municipal Accounting, 1936.

Wayne, Edward A., Editor, Committee on Municipal Obligations, National Association of Supervisors of State Banks. Municipals. Washington, D. C.: Federal Deposit Insurance Corporation, National Capital Press, 1941.

#### F. MISCELLANEOUS

State Examiners and Inspectors Form 1404--1949.

Typist: Willnetta Horner