



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL  
BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

November 26, 1986

A. Kenneth Dunn  
Director  
Department of Water Resources  
450 W. State St.  
Boise, ID 83720  
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Debt Limitations on Municipalities

Dear Mr. Dunn:

In your letter of October 6, 1986, you refer to the issue of debt limitation on municipalities. Specifically:

Do loans by municipalities for energy conservation measures on buildings or facilities [owned by municipalities] come within the "ordinary and necessary" expense exception to Article 8, Section 3 of the Idaho Constitution, allowing the indebtedness to extend over a period of years without approval by the electorate?

In this reply, I assume that the program is structured in conformity with applicable federal rules and regulations, and address only its compliance with Idaho law.

Article 8, § 3 of the Idaho Constitution provides in essence that no local government entity may incur any indebtedness which will exceed its revenue in any given year without a vote of the people. The only exceptions are those obligations which are found to be "ordinary and necessary"

A. Kenneth Dunn  
Director, Department of Water Resources  
November 26, 1986  
Page 2

expenses or those which fall within the "special fund" classification, i.e., those paid solely out of revenues from the operation of the facility or works.

An expense is "ordinary" if in the ordinary course of the transaction of municipal business, or the maintenance of municipal property, it may be and is likely to become necessary. Hanson v. City of Idaho Falls, 92 Idaho 512, 446 P.2d 634 (1968); Thomas v. Glindeman, 33 Idaho 394, 195 P. 92 (1921). "Ordinary" means "regular; usual; normal; common; often recurring; . . . not characterized by peculiar or unusual circumstances"; "necessary" means "indispensable"; an expense may be "ordinary and necessary" even though it does not arise frequently and at regular intervals. City of Pocatello v. Peterson, 93 Idaho 774, 778, 473 P.2d 644 (1970). An expenditure need not be required by law to be ordinary and necessary. Board of County Commissioners v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1975).

. . . It is one of the incidents of the ownership of property that it must be kept in repair . . . if the property is to be useful and serve its purpose. The making of repairs may, however, only occur at infrequent intervals, and still be an ordinary and necessary expense.

Hickey v. City of Nampa, 22 Idaho 41, 45-46, 124 P.280 (1912).

Based upon these interpretations, it is likely that our court would find that energy conservation measures on public buildings or facilities would meet the ordinary and necessary expense exception of Art. 8, § 3 of the Idaho Constitution; i.e., no election is necessary to authorize such expenses even if they constitute an "indebtedness or liability" of the municipality. Hanson v. City of Idaho Falls, 92 Idaho at 514, 446 P.2d at 636.

Although not addressed in your letter, you have also asked whether a city or municipality is authorized to act as a lending agent of Exxon case funds (for energy conservation measures) to private individuals. We do not have sufficient information to provide a detailed analysis of this program and must again assume that it complies with applicable federal rules and regulations. If the municipal corporation acts as a guarantor of energy conservation loans to private individuals, it is quite likely that a court would strike down the arrangement as a violation of Art. 12, § 4 of the Idaho Constitution which

A. Kenneth Dunn  
Director, Department of Water Resources  
November 26, 1986  
Page 3

prohibits a municipal corporation from lending or donating its credit to private entities. Engleking v. Investment Board, 93 Idaho 217, 458 P.2d 213 (1969); Nelson v. Marshall, 94 Idaho 726, 497 P.2d 47 (1972). However, if the city is merely a pass-through agency, not required to guarantee the loans, then it is unclear what a court would do if faced with a challenge to the city's conduct.

If our office can be of further assistance, please let us know.

Sincerely,

*Daniel G. Chadwick*

DANIEL G. CHADWICK  
Deputy Attorney General  
Intergovernmental Affairs

DGC/mkf