



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

February 27, 1990

Mr. Colin W. Luke
Bingham County Prosecuting Attorney
501 North Maple
Blackfoot, ID 83221

← Re: Attorney General Reference No. 8001

Dear Mr. Luke:

You have inquired regarding the authority of the county hospital board to borrow money and to incur debt. Specifically, you have asked whether the hospital is considered a "political subdivision" and whether the board has the authority to obligate the county or to pledge revenue of the county.

1. The county hospital is not a political subdivision of the state. In analyzing what entities are subject to the debt limitation provisions of Article 8, section 3 of the Idaho Constitution, the Idaho Supreme Court has determined that such "subdivisions" are those with the power to levy or collect taxes. Lloyd v. Twin Falls Housing Authority, 62 Idaho 592, 113 P.2d 1102 (1941); Board of County Commissioners v. Idaho Health Facilities Authority, 96 Idaho 496, 531 P.2d 588 (1975); BRA v. Yick Kong, 94 Idaho 876, 499 P.2d 575 (1972). While the county hospital board is empowered to issue tax anticipation notes or warrants, it is not empowered to levy or collect the taxes upon which such notes or warrants are based and is, therefore, not an entity with the power to tax.

2. While the county hospital board is not a political subdivision of the state subject to the constitutional debt limitation, it is subject to an express statutory debt limitation. Pursuant to Idaho Code § 31-3608:

Celebrate
IDAHO
1890 • CENTENNIAL • 1990

Mr. Colin W. Luke
February 27, 1990
Page two

The county hospital board shall not have power to create any indebtedness in excess of the amount of its annual budget as approved by the Board of County Commissioners.

Thus, the county hospital board is constrained by law to operate within its annual budget and is, therefore, not authorized to create long term debt.

3. The county hospital board is not authorized to obligate the county or to pledge county revenues for indebtedness. The board is the creature of the county commission by authority of the Idaho Code statutory provisions and its powers and duties are defined by the law. The statute does not provide any authority to obligate the county and, as noted above, its power to create debt is narrowly circumscribed.

4. If the county were to incur debt on the hospital's behalf, such action would be subject to the debt limitation provision of the Idaho Constitution.

Article 8, § 3 of the Idaho Constitution provides:

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax 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 thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state .

. . . .

In essence, this section means that no local government entity may issue any indebtedness which will exceed its revenues in any given year without a vote of the people. The only exceptions are those obligations which are found to be "ordinary

Mr. Colin W. Luke
February 27, 1990
Page three

and necessary" expenses and those which are specifically enumerated in this provision. The purpose of the constitutional debt limitation is to prevent current office holders from encumbering future generations with massive liability. Therefore, any indebtedness or liability incurred in excess of revenues for a particular year is void under Article 8, § 3, unless approved by the voters or unless it falls within the "ordinary and necessary expenses" provision. Contracts incurred in violation of this provision are not enforceable. Enclosed is a copy of Attorney General Opinion No. 88-3, which discusses the issue of "ordinary and necessary expenses" in detail.

In Board of County Commissioners v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 558 (1975), the Idaho court found county expenditures made to improve the structure of a hospital to comply with state safety standards to be "ordinary and necessary" in light of state public needs at the time, saying:

It is certainly an ordinary and necessary undertaking to keep existing hospitals operational and in good repair. If the county commissioners of Twin Falls County believe that it is necessary to make expenditures to remedy structural defects in Magic Valley Hospital, this is an ordinary and necessary expense upon the part of the county. City of Pocatello v. Peterson, supra. For that reason, there is no violation of Article 8, section 3, of the Idaho Constitution by the agreement between Twin Falls County and the Authority to provide funds for remedying the substandard structure of Magic Valley Hospital, even though revenues from the Magic Valley Hospital become liable for expenditure beyond the current year.

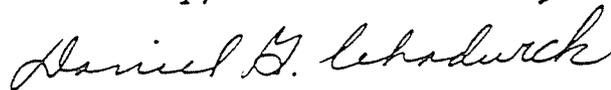
Id. at 510.

In summary, the county hospital board is prohibited by state law from incurring debt in excess of the annual budget approved by the county commissioners. The county itself is prohibited from incurring debts on behalf of the county hospital in excess of county revenues for any given year, unless such expenditures are deemed "ordinary and necessary" or unless an appropriate election is held. What is "ordinary and necessary" depends on the individual case.

Mr. Colin W. Luke
February 27, 1990
Page four

This letter is provided to assist you. The response is an informal and unofficial expression of the views of this office based upon the research of the author.

Sincerely,



DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division

~~LH/dp~~

~~Enclosure~~