

Role of Bond Counsel

- Bond counsel are lawyers engaged to provide an objective legal opinion (not as a partisan advocate) with respect to:
 - The validity of bonds and
 - The tax treatment of interest on the bonds, other subjects.
- Opinions of Bond Counsel are generally required by both issuers and investors.

Bond Counsel Opinions

Bond Counsel's opinion usually addresses:

- (1) that the bonds have been duly authorized and executed by and are valid and binding obligations of the issuer;
- (2) the source of payment or security for the bonds; and
- (3) whether and to what extent interest on the bonds is exempt from federal income taxes and from other taxes, if any, imposed by the state of issue.

Dillon's Rule

Dillon's Rule narrowly defines the power of local governments, and provides that municipalities have:

Those powers expressly granted and those incidental or implied powers that are necessary to enable a municipality to perform the function authorized.

Home Rule

- Counties and Cities may adopt Home Rule Charters by approval of the voters. May be initiated by petition of 10% of voters in last gubernatorial election.
- May exercise any legislative power or perform **any function not denied by its charter, the Constitution or the general laws of the state.**
- May provide for any form of executive, legislative and administrative structure which shall be of superior authority to statute.

SDCL 9-40-15

Bonds issued pursuant to this chapter shall be payable solely from the revenue or income derived from the operation of such utility constructed or otherwise acquired or extended or improved hereunder.

The municipality may . . . provide that all or any portion of the revenue or income from the utility to be constructed, or otherwise acquired, extended, or improved hereunder, or any part thereof, be segregated from the other revenue or income of the utility, and that only the segregated portion of the revenue or income so segregated be used for the payment of such bonds.

The municipality may for this purpose establish a special charge or surcharge for the services of the facilities financed by the bonds. . . .

Drinking Water/Wastewater Systems

- System Revenue Pledge
- A Portion of System Revenues
- Surcharge Revenue Pledge

Revenues of the Facility Financed

- “An obligation to pay a bond out of income of the existing facility will create a debt.” *Boe v. Foss (1956)*
- “Because of [a] pledge of additional property and resources of the City, a Constitutional debt will be incurred.” *Berven v. Bd. Of Regents (1972)*

Benefit Matters

Hubbard v. CITY OF PIERRE, 2010 SD 55, 784 N.W.2d 499 (Justice Meierhenry)

- Undisputed that replacing the curb & gutter did not enhance the value of abutting property.
- City argued that special benefits — new curb & gutter protected the property by providing proper drainage.
- The special assessment was unconstitutional when the Circuit Court found
 - the benefit of replacement curb & gutter was the same for the property owners as it was for the community at large
 - many of the benefits only benefited the City; and no actual, physical, material and quantifiable special benefits to the adjacent properties.