Constitutional Debt

ARTICLE 13 § 4

Todd Meierhenry
todd@meierhenrylaw.com
1-605-336-3075

Meierhenry Sargent LLP
ATTORNEYS AT LAW

5 % for Cities for any purpose

§ 4. The debt of any … city… shall never exceed five per centum upon the assessed valuation of the taxable property therein, for the year preceding that in which said indebtedness is incurred. . .

Additional 10%

- Provided, that any … municipal corporation, … may incur an additional indebtedness, not exceeding ten per centum upon the assessed valuation of the taxable property therein, for the year preceding that in which said indebtedness is incurred, for the purpose of providing water and sewerage, for irrigation, domestic uses, sewerage and other purposes; and

Additional 8%

- Provided, further, that in a city where the population is eight thousand or more, such city may incur an indebtedness not exceeding eight per centum upon the assessed valuation of the taxable property therein for the year next preceding that in which said indebtedness is incurred for the purpose of constructing street railways, electric lights or other lighting plants.

Provided debt over 5% is done with majority vote

- Provided, further, that …. no such debt shall ever be incurred for any of the purposes in this section provided, unless authorized by a vote in favor thereof by a majority of the electors of such … municipal corporation … incurring the same.

Short Version

- 5% any purpose
- 10% for water and sewer if approved by majority vote (50% + 1)
- 8% for electric utility or electric rail, if your city is over 8,000 population and approved by majority vote (50% + 1)

How To Calculate (Quick Calc)

- Last determined assessed valuation
- Multiply by .05*
- Subtract out applicable existing debt

- Amount of Constitutional debt left

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* debt limit for 8% an d 10% are calculated in the same manner and each are separate calculations

Calculating 5%

Assessed valuation

Not taxable valuation (Factored Value)

Add centrally assessed (Department of Revenue)

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TOTAL ASSESSED VALUE

X

.05

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5% constitutional debt limit*

*Similar calculation for 10% and 8%

Calculating Outstanding Debt plus New Debt

+ Principal Amount of Outstanding Bonds

+ Principal Amount of Proposed debt

Total Debt

Adjustments to Debt

- reserve fund
- taxes levied for bonds and in process of collection
- cash in bond redemption fund

Statutory Complications

- The Preceding has been the Constitutional Provisions
- SDCL § 6-8B-2 provides that "unless otherwise provided" that all bonds require a 60% election
- The most frequently used "unless otherwise provided" are
  - Sales Tax
  - Parking
  - Tax Increments
  - Project Utility Revenue (segregated revenue or income)
  - SRF Loans

What does not constitute debt

- Where city has discretion to appropriate payment on an annual basis (January 1 to December 31)
  - Annual appropriation, termination, or funding out
- Special Assessments Bonds
- Enterprise funds not using existing revenue
  - Revenue only from new facilities used to pay bonds issued for construction of the new facilities
  - Surcharge on revenues established and it pays bonds issued for construction of the new facilities

Ways City can avoid 5% Debt

- For water, sewer or electric use GO Bonds
  - Generally lowest interest rates-60% election-these can be structured so they are a back up to payment by revenues
- For water, sewer, or electric payable from system revenues
  - 60% election
- For water, sewer or electric not payable from system revenues (exception for SRF)
  - Sales taxes, SRF, or full payout lease--50% election
- Use of annual appropriation lease/purchase
  - Not necessarily limited by 10 years by SDCL 9-21-18.1

Why and where use of 5% limit could be a concern

- Especially cities with less than$100 million assessed value because of emergencies
- Once a debt is incurred (principal pays down slowly) and impact remains until valuations go up or principal goes down
- New debt for streets and non utility TIF's do not have much for options
- Issuance of debt exceeding limit is **Void**

Walling v Lummis (1902)

- It is contended on the part of the appellant that, as it is stipulated in the agreed statement of facts that the county of Custer had a bonded indebtedness of $71,019, and an assessed valuation of $1,300,000, it affirmatively appears that said county had exceeded the limit of 5 per cent. indebtedness allowed by section 4 of article 13 of the constitution, which provides, "The debt of any county, city, town, school district or other subdivision shall never exceed five per centum upon the assessed value of the taxable property therein," and the bonds issued and proposed to be issued are void

  Walling v. Lummis, 16 S.D. 349, 92 N.W. 1063, 1064 (1902)

Spangler v City of Mitchell (1915)

- As originally adopted in 1889, section 4 was as follows:
- "The debt of any county, city, town, school district, *** or other subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein. In estimating the amount of indebtedness which a municipality or subdivision may incur the amount of indebtedness contracted prior to the adoption of this Constitution shall be included."

- Spangler v. City of Mitchell, 35 S.D. 335, 152 N.W. 339, 340 (1915)

Spangler v City of Mitchell (1915)

- In 1896 this section was amended by adding two provisos; the first of which authorized municipalities to incur an additional indebtedness, not to exceed 10 per cent. upon the assessed valuation of the assessable property therein, for the purpose of providing water for irrigation, domestic uses, etc. The second proviso in the section as first amended, among other things, declares that:
- "No such debt shall ever be incurred for any of the purposes in this section provided; unless authorized by a vote in favor thereof of a majority of the electors of such county, municipal corporation," etc.

- Spangler v. City of Mitchell, 35 S.D. 335, 152 N.W. 339, 340 (1915)

Spangler v City of Mitchell (1915)

- In 1902 this section was again amended, substantially re–enacting the then existing provisions of **section 4**, but adding thereto what is now the second proviso, to the effect that cities containing a population of 8,000 or more may incur an indebtedness not exceeding 8 per cent. upon the assessed valuation of the taxable property therein, for the year next preceding that in which said indebtedness is incurred, for the purpose of constructing street railways, electric lights, or other lighting plants.
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Spangler v City of Mitchell (1915)

- This limitation must be construed as extending only to indebtedness created for the purposes named in the preceding provisos.
- It is true that section 4, taken as a whole, is a limitation upon power of municipalities to create indebtedness for any municipal purpose whatever. But to construe the third proviso otherwise than as indicated would be to hold that no indebtedness for any purpose whatever could be incurred or created by a city, unless first submitted to a vote of the electors. The absurd results of such a construction are too obvious to require discussion.
- We therefore hold that it is only when the proposed indebtedness is to be incurred for water, sewerage, etc., or for construction of street railways, electric lights, etc., in excess of the 5 per cent. limitation, that the provisions of section 4 of article 13 of the Constitution apply. It is clear, therefore, that the city without a vote may incur indebtedness within the 5 per cent. limitation for any municipal purpose when authorized by a law which is not in conflict with any other provision of the Constitution, except that it may not issue bonds without such vote. Section 1229, subd. 5, Pol. Code

  Spangler v. City of Mitchell, 35 S.D. 335, 152 N.W. 339, 341 (1915)

In Re Opinion of Judges (1917)

- It has therefore been quite uniformly held that the word "debt," as used in such constitutional provisions, does not include any pecuniary obligation imposed by contract which, within the lawful and reasonable contemplation of the parties thereto, is to be satisfied out of the current revenues for the year, or out of some fund then within the immediate control of the corporation.

  In re Opinion of the Judges, 38 S.D. 635, 162 N.W. 536, 540 (1917)

Nelson V Lembcke (1920)

- In Spangler v. City of Mitchell, 35 S. D. 335, 152 N. W. 339, Ann. Cas. 1918A, 373, this court held that the last portion of the third proviso, beginning with the words "and no such debt," did not relate to the first sentence of the section. We likewise here hold that the preceding portion of the third proviso does not relate to said first sentence, but relates only to the first proviso. In other words, it applies only to water, irrigation, or sewerage districts embracing more than one corporate entity or unit.

  Nelson v. Lembcke, 43 S.D. 207, 178 N.W. 981, 983 (1920)

In re Opinion of Judges (1920)

- Also, the provision limiting the indebtedness of the state to $100,000 contained in section 2 of said article 13 of the Constitution has not been expressly removed from the Constitution.
- In re Opinion of the Judges, 43 S.D. 635, 177 N.W. 812, 813 (1920)

Hess v City of Watertown (1930)

- If the entire obligation of the city on the proposed bonds were to turn over to the bondholders the net income from an electric plant to be purchased with the proceeds of the bonds proposed to be issued, without any other promise to pay, it may well be doubted whether the provisions of section 6413 would have any applicability thereto. McQuillin Mun. Corp. (2d Ed.) vol. 6, § 2389; Joliet v. Alexander, 194 Ill. 457, 62 N. E. 861; Wilder v. Murphy, 56 N. D. 436, 218 N. W. 156, 161. In Lang v. City of Cavalier, 228 N. W. 819, 825, the North Dakota court cites many authorities to support its statement that "the great weight of authority is to the effect that a municipality does not create an indebtedness within the purview of prohibitions against incurring indebtedness by purchasing property to be paid for wholly out of the income therefrom with no general liability."

- Hesse v. City of Watertown, 57 S.D. 325, 232 N.W. 53, 57 (1930)

In re Opinion of the Judges (1932)

- Under this section we are of the opinion that moneys now on hand (or hereafter to be received) as the result of payment of taxes (whether motor vehicle fuel tax or other tax) already levied, and the proceeds of which have already been appropriated, must be applied to the purposes for which they were levied and to which they have already been appropriated, and we think the same could not now be diverted, even by legislative action, to any other purpose. See Opinion of the Judges, 50 S. D. 324, 210 N. W. 186; White Eagle Oil & Refining Co. v. Gunderson, 48 S. D. 608, 205 N. W. 614, 43 A. L. R. 397.

  In re Opinion of the Judges, 59 S.D. 469, 240 N.W. 600, 601 (1932)

W. Sur. Co v Mellette Cty (1934)

- The doctrine is nevertheless firmly entrenched in the law of this state and may be thus rubricated; warrants for current expenses during any fiscal year may be issued in anticipation of and within the limits of a lawful tax levy for such purposes for such period, even though such levy has not yet been collected, and the issuance of such warrants will not be deemed the incurring of an indebtedness or the increasing of existing indebtedness within the meaning of the constitutional prohibition.

  W. Sur. Co. v. Mellette Cty., 63 S.D. 243, 257 N.W. 461, 463 (1934)

Schomer v Scott (1937)

- It is the settled law of this jurisdiction that the funding of valid existing indebtedness does not create additional indebtedness within this constitutional provision. Walling v. Lummis, 16 S.D. 349, 92 N.W. 1063; National Life Insurance Company of Montpelier, Vt. v. Mead, Treasurer, 13 S.D. 37, 82 N.W. 78, 48 L.R.A. 785, 79 Am.St.Rep. 876.
- There is no sufficient showing here to present a question as to the application of section 4 of article 13 to the inception of any of the debt of Stanley county to these school funds, and we therefore express no opinion on that subject.

  Schomer v. Scott, 65 S.D. 353, 274 N.W. 556, 564 (1937)

Mettet v. City of Yankton (1946)

- The only source of payment is the revenue from the operation of the bridge which the statute makes the exclusive source of payment and which the ordinance requires shall be kept separate from other city funds, and from such revenue it is contemplated the bonds shall be paid. … This court has aligned itself with the overwhelming weight of judicial opinion in holding that bonds of the type and character of those here involved do not constitute a debt within the meaning of Sec. 4, Art. XIII of the Constitution of this state. Gross v. City of Bowdle et al., 44 S.D. 132, 182 N.W. 629; State College Development Ass'n. v. Nissen, 66 S.D. 287, 281 N.W. 907; Annotations 146 A.L.R. 328; 96 A.L.R. 1385; 72 A.L.R. 687.

- Mettet v. City of Yankton, 71 S.D. 435, 438, 25 N.W.2d 460, 462 (1946)

Farrar v Britton Indep Sch Dist of Marshall County (1948)

- This court has recognized that revenue may be anticipated and that liabilities incurred during a fiscal year within the limits of lawful tax levies are not debts within the meaning of the Constitution.
- Upon the record before us, the amount on hand to the credit of this fund and the amount of income to be derived from the 1946 sinking fund levy only are available as offsets.
- Farrar v. Britton Indep. Sch. Dist. of Marshall Cty., 72 S.D. 226, 230, 32 N.W.2d 627, 628–29 (1948)

City of Tyndall v. Schuurmans (1953)

- A contention of the city is that it could legally obligate itself in an amount equal to the donations received toward the cost of the hospital without creating a debt within the limitation of § 4, art. XIII of the constitution of South Dakota.
- (Promises to pay by city negated by pledges)

- The constitutional policy the court was bound to uphold makes no exception of indebtedness incurred with good intentions for wholesome purposes.

  City of Tyndall v. Schuurmans, 74 S.D. 566, 574, 56 N.W.2d 693, 697–98 (1953)

Boe vs Foss (1956)

- An obligation to pay a bond out of income of the existing facility will create a debt.

  Boe v. Foss, 76 S.D. 295, 310, 77 N.W.2d 1, 10 (1956)

Berven v. Bd. Of Regents (1972)

- A debt is incurred when a city is pledging in payment of bonds resources and revenues belonging to the city in addition to the net income of the property to be acquired with their proceeds. Because of that pledge of additional property and resources of the City, a Constitutional debt will be incurred.' 77 N.W.2d 1, 5.

- Berven v. Bd. of Regents of Ed., 86 S.D. 741, 747, 201 N.W.2d 218, 221 (1972)

Meierhenry v City of Huron(1984)

- In *Gross v. City of Bowdle*, 44 S.D. 132, 182 N.W. 629 (1921), this court held that bonds issued only for the purpose of funding a special assessment and paid by the funds to be collected from the special assessment and not by any general taxes assessed against the property outside the special assessment district did not constitute an indebtedness within the meaning of Art. XIII, § 4. In *Mettet v. City of Yankton*, 71 S.D. 435, 25 N.W.2d 460 (1946), this court held that certain revenue bonds did not constitute a general obligation of the city for Art. XIII, § 4 purposes when the only source of payment of the bonds was the revenue from the operation of a bridge, which revenue was by statute the exclusive source of payment and which an ordinance required to be kept separate from other city funds and from which revenue the bonds were to be paid. *See also Berven v. Bd. of Regents*, 86 S.D. 741, 201 N.W.2d 218 (1972); *Millar v. Barnett*, 88 S.D. 460, 221 N.W.2d 8 (1974); *Clem v. City of Yankton, supra.*

  Meierhenry v. City of Huron, 354 N.W.2d 171, 178 (S.D. 1984)

Meierhenry V City of Huron (1984)

- It is clear, therefore, that the city without a vote may incur indebtedness within the 5 per centum limitation for any municipal purpose when authorized by a law which is not in conflict with any other provision of the Constitution, except that it may not issue bonds without such vote [if required by statute].

- Meierhenry v. City of Huron, 354 N.W.2d 171, 180 (S.D. 1984)

THE END

- QUESTIONS?