



General Obligation Bonds for Affordable Housing

Constitutional Limits on the Use of General Obligation Bond Proceeds

Harvey W. Rogers, Hawkins Delafield & Wood LLP

Senate Committee on Rules
February 27, 2018

Local Government General Obligation Bonds

In Oregon, local government general obligation bonds:

- Are very secure, and usually have the lowest available interest rates.
- Require a vote of the people in the local government.
- Can only be used to finance capital costs.
- Allow the local government to levy an additional property tax that is sufficient to pay the bonds.

Since 1857 the Oregon Constitution has limited general obligation bond financing for the benefit of certain kinds of private entities.

Article XI, Section 9 was part of the constitution that voters approved in 1857.

- ❖ It says: “No county, city, town or other municipal corporation, by vote of its citizens, or otherwise, shall become a stockholder in any joint company, corporation or association, whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association.”
- It clearly prohibits stock ownership, but what else it does isn't very clear.
- More than 100 years ago the Oregon Supreme Court used Article XI, Section 9 to invalidate a City general obligation bond issue that would have financed railroad improvements.

The “Unqualified Opinion” Requirement

Local governments usually have to get an “unqualified opinion of nationally recognized bond counsel” to borrow money.

- ❖ An “unqualified opinion” is one that meets the standards of the National Association of Bond Lawyers.
 - ❖ Many lawyerly words have been written to describe what that standard means.
 - ❖ In practice, bond lawyers can only give an unqualified opinion if they are highly confident that all reasonable judges would agree with them.
- Since the Oregon Supreme Court invalidated a general obligation bond issue a long time ago because it financed a private railroad in violation of Article XI, Section 9; and
- Since the Oregon Supreme Court hasn’t said much useful about Article XI, Section 9 since then;
- Bond counsel can’t give an unqualified opinion about general obligation bonds that finance facilities that are owned by corporations or similar entities.

Modern Affordable Housing Transactions Often Involve Corporations and Similar Entities

It is difficult to finance affordable housing, and many tools have been developed to make it easier. Unfortunately, many of these tools involve corporations and similar entities.

- ❖ Low income housing tax credits are a significant federal benefit for low income housing. To use them, the housing project must be owned by a corporation or similar entity.
- ❖ The federal Housing and Urban Development agency makes advantageous loans for low income housing. It often requires that the housing be owned by a separate corporation or similar entity.
- ❖ Private developers often are interested in financing and developing low income housing. Naturally, they are interested in owning the housing they finance and develop.

Currently these tools cannot be easily combined with local government general obligation bonds. Amending Article XI, Section 9 would make these tools much more available.

Without an amendment to Article XI, Section 9:

- Local governments can use general obligation bonds to finance affordable housing, but with limitations on:
 - Ownership: The housing must be owned and controlled by a local government
 - Ability to Leverage other Funding: Cannot combine GO bonds financing with lots of other, conventional housing finance tools, such as low income housing tax credits, or tax-exempt bonds for privately owned, qualified residential rental projects.