

# FINANCING YOUR PROJECT THROUGH MUNICIPAL BONDS

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# Today's Agenda:

- I. Role of Bond Counsel
- II. Can Your Project be Financed with Bonds?
- III. Appropriations - General Considerations
- IV. Debt Limit Issues
- V. Federal Tax Issues

# Today's Agenda:

- VI. Drafting Your Warrant Article
- VII. Budget Committee Issues
- VIII. Procedural Requirements
- IX. Special Meetings
- X. Payment Terms
- XI. A Final Word & Contact Information

# I. Role of Bond Counsel

- ▶ **Need for Bond Counsel Opinion**
  - ▶ State Law
  - ▶ Federal/State Tax Law
  - ▶ Securities Laws
  - ▶ Conventions of the Marketplace
- ▶ **Bond Counsel Opinion - Form and Substance**
  - ▶ “Clean” or “Unqualified” Opinion
  - ▶ Validity
  - ▶ General Obligation
  - ▶ Tax Exemption
  - ▶ Bank Qualification
- ▶ **Bond Counsel Opinion Standard**
  - ▶ High Degree of Confidence / Reasonable Certainty

## II. Can Your Project Be Financed With Bonds?

- ▶ **"Public Improvements of a Permanent Nature"**
  - ▶ "Public"
  - ▶ "Capital" v. "Operation and Maintenance" Expenses
- ▶ **Preliminary Expenses**

### III. Appropriations - General Considerations:

- ▶ Need to Appropriate a Specific Sum of Money
- ▶ Be Sure You Appropriate Enough Money
  - ▶ Unexpended Bond Proceeds
- ▶ Sources Used to Fund Appropriation
  - ▶ Bond Proceeds
  - ▶ General Tax Revenues
  - ▶ Capital Reserves
  - ▶ Grants and Gifts
  - ▶ Interest Earnings on Invested Bond Proceeds
- ▶ Payments of Principal and Interest
  - ▶ Included in Bond Warrant Article or in Budget?

## IV. Debt Limit Issues:

- ▶ General Debt Limit Restrictions
- ▶ "Overlapping" Debt Limit
- ▶ Exceptions from Debt Limit

## V. Federal Tax Issues:

### ▶ Arbitrage

- ▶ Concept/Why Important
- ▶ Need for Project
- ▶ "Over issuance" Problems
- ▶ Spending Requirements
- ▶ Excessive Term

### ▶ Rebate

- ▶ Concept/Why Important
- ▶ Exceptions
  - ▶ "Small Issue" Exception
  - ▶ "18 Month" Spending Exception
  - ▶ "2 Year Construction" Exception
- ▶ Yield Restriction
- ▶ Compliance/Payment



## V. Federal Tax Issues:

- ▶ **Private Activity Bonds**
  - ▶ Private Use and Private Payment/Security Test
  - ▶ Example
- ▶ **Bank Qualification**
- ▶ **Reimbursement Rules**
  - ▶ “18 month/3 year” Rule
  - ▶ Exceptions
    - a. de minimus
    - b. preliminary expenses
    - c. small issuer
    - d. 5 year

## VI. Drafting Your Warrant Article:

- ▶ **Reflect Prior Discussion**
- ▶ **Governing Body v. Legislative Body Authority to Determine Terms**
- ▶ **Bond Anticipation Notes**
- ▶ **"Formalities"**
  - ▶ **Order of Articles on Warrant**
  - ▶ **Required Vote**
  - ▶ **Recommendations of Governing Body and Budget Committee (if any)**

## VII. Budget Committee:

- ▶ **Budget Committee Hearing and Recommendations**
- ▶ **"10% Rule"**
- ▶ **Override of Budget Committee Negative Recommendation**

## VIII. Procedural Requirements:

- ▶ Bond Hearing and Notice
- ▶ Budget Hearing and Notice
- ▶ Posting of Warrant
- ▶ Posting of Budget
- ▶ Official Ballot/SB2 Requirements
- ▶ Voting
  - ▶ Order of Articles
  - ▶ Separate Ballot Boxes
  - ▶ Duration of Voting
  - ▶ Vote Required to Pass
- ▶ Curing Defects
  - ▶ "Curative" Meeting

## IX. Special Meetings:

- ▶ **Requirement for Appropriations at Special Meetings**
  - ▶ Majority of Voters
  - ▶ Superior Court Decree
- ▶ **Definition of "Emergency"**
- ▶ **Procedural "Hoops" in Petitioning for Special Meeting**

## X. Payment Terms:

- ▶ **First Principal Payment**
- ▶ **"2% Rule"**
- ▶ **No "Demand" Bonds**
- ▶ **Maturity Limitations**
  - ▶ Legal Restrictions
  - ▶ Marketplace Conventions
- ▶ **Ability to Prepay ("Callable" Bonds)**

## XI. Bond Anticipation Notes:

- ▶ Can Be Issued In An Amount Up to That Authorized For The Bond
- ▶ Interest Only Payments for First 3 Years
- ▶ Can Be Outstanding for 5 Years - Principal Payment Due at Years 3 and 4

## XII. A Final Word & Contact Info:

- ▶ **CONTACT BOND COUNSEL EARLY ON IN PROCESS!!**
  - ▶ Review Warrant Article
  - ▶ Review Process/Schedule

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