

Bond Case Briefs

Municipal Finance Law Since 1971

City Clarifies Possible Confusion Over Bond Language.

In less than three weeks, Norman voters will consider three propositions on the ballot at the April 2 Special Election, which, if passed, will authorize three city ordinances that dictate how voter-approved funds will be spent.

The first two propositions are a transportation bond and a stormwater bond, and the third is a stormwater utility, which would be established as an enterprise fund that only allows collected fees to be used for stormwater needs.

There are several categories of bonds under the Oklahoma Constitution available to municipalities, each of which has specific guidelines for allowed use. The city worked with its bond counsel to develop the two separate general obligation bonds authorized by Oklahoma bond laws.

“The authorization and issuance of general obligation bonds by a city are governed by specific provisions set forth in the Oklahoma Constitution and related Oklahoma statutes,” said Nathan Ellis, of the Public Finance Law Group, PLLC. “Propositions, or what appears on the ballot, are limited by State of Oklahoma election law to 200 words or less. After including the required technical language, there is little room for more than a general statement of purpose. However, all of the detail within the ordinance is incorporated as a matter of law.”

The ordinances for the transportation and stormwater bonds list specific projects for which voters would be approving funds and direct the city on where to spend any excess funds.

The proposed transportation bond, or Proposition 1, which would fund needed transportation infrastructure projects, is authorized under the Oklahoma Constitution Article X, Section 27 — “indebtedness for purchase, construction or repair of public utilities.” It is a \$72 million bond and is limited to the purpose of constructing, reconstructing, improving or repairing streets or bridges.

The Bond Issue Proceeds Act, Title 62, Oklahoma Statutes Section 571 et seq., requires that the city state the general purpose of the bond issue and further identify specific projects for which at least 70 percent of the bond proceeds shall be expended. The city specifically described the 19 transportation projects, outlined in Ordinance O-1819-25 of the city, which represent 100 percent of the bond proceeds; remaining funds, if any, after completion of all of the specific projects will be used for other projects in the city’s comprehensive transportation plan.

The proposed stormwater bond, or Proposition 2, which would fund critical stormwater infrastructure projects, is a \$60 million bond authorized under the Oklahoma Constitution Article X, Section 35 — “Municipal and county levy for securing and developing industry” — as further governed by the provisions of the Municipal and County Economic and Community Development Bonds Act found in Title 62, Oklahoma Statutes Section 801 et seq.

The act allows cities to call bond elections for a “qualified economic or community development purpose.” Public infrastructure facilities, including specifically stormwater projects, are defined as having a qualified economic or community development purpose.

Although it was not possible to list all of the specific projects and adhere to the word limit, the city did, in its Ordinance O-1819-26, further specify that the purpose of the bonds is “to include, constructing, improving and equipping stormwater drainage facilities.” In this ordinance, the city listed the 33 specific stormwater projects that will be completed with the bond proceeds so the public will know exactly how the funds will be spent.

Moreover, should funds remain after the stormwater projects are complete, the ordinance states that any surplus funds shall be utilized to complete other projects identified in the Storm Water Master Plan. The SWMP was completed in 2009 and contains only stormwater projects.

“It is certainly true that the city could use the same act to ask the citizens to authorize indebtedness for a variety of other projects,” Interim City Attorney Kathryn Walker said. “However, that is not the case here, and the language in the ordinance clearly does not contemplate or allow for the use of the bond proceeds for anything that is not a stormwater project identified either in the provided list or in the SWMP.”

Additionally, because the two bonds up for election April 2 are authorized under separate constitutional provisions, Proposition 1 does not impact Proposition 2’s borrowing capacity and vice versa. Also, while a cap on the interest rate percentage must be set in the bond ordinances, these are not the expected interest rates.

For example the not-to-exceed interest rate defined for Proposition 1 is 10 percent per year. However, Finance Director Anthony Francisco said bids for municipal bonds are competitive and based on current market rates.

“By statute, we cannot exceed 10 percent for transportation bonds or 14 percent for community development bonds, but based on current market conditions and the city’s AA rating, we expect to be way below that, somewhere in the 4 to 3.5 percent range,” Francisco said. “In my time here, when market rates were higher we’ve had some bonds at 6 percent, but certainly nothing close to 10 percent.”

Voters can read the ballot language and see the ordinances, as well as other information, at VisionForNorman.com.

The Norman Transcript

Mar 18, 2019