

1975

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### Recommended Citation

Williams, K. Craig (1975) "Coping with Expansion: The State as Local Government Financier," *Land & Water Law Review*: Vol. 10 : Iss. 2 , pp. 577 - 592.

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## COMMENT

### COPING WITH EXPANSION: THE STATE AS LOCAL GOVERNMENT FINANCIER

Faced with a potential increase in the state's population by at least one-sixth<sup>1</sup> and national publicity over the human conditions in the impact areas, the 1975 Wyoming Legislature took major action to enable the state's subdivisions to cope with the growth. In the Industrial Development Information and Siting Act<sup>2</sup> the Legislature wrote into law a mechanism giving a new state commission power to prevent the advent of industry to a community until the community is capable of handling it.<sup>3</sup> Also the Legislature considered and passed laws designed to give the communities adequate funds to construct the necessary capital improvements to provide essential services for the people. The purpose of this comment is to consider these statutes aiding local government capital expansion.

#### THE PROBLEM

The traditional means for providing capital expansion has been for the individual governmental units to issue bonds. The Wyoming Constitution now limits indebtedness of cities and towns to four per cent of assessed valuation plus four per cent more for sewage disposal with no limitation on water supply indebtedness.<sup>4</sup> County indebtedness is limited to two per cent and school indebtedness to ten per cent.<sup>5</sup> Paraphrasing the Wyoming Supreme Court in *War Memorial Hospital v. Board of Commissioners of Park County*,<sup>6</sup> it is quite ap-

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1. The Powder River Basin alone is supposed to increase in population somewhere between 19,000 and 50,000 by 1990. DEPARTMENT OF ECONOMIC PLANNING AND DEVELOPMENT, COAL AND URANIUM DEVELOPMENT OF THE POWDER RIVER BASIN—AN IMPACT ANALYSIS 61 (1974).
2. Ch. 169 [1975] Wyo. Sess. Laws.
3. Wyo. STAT. § 35-502.87(b) (Supp. 1975) was created to read: "No permit shall be granted if: (iii) The cumulative effect of the facility will substantially impair the health, safety and welfare of people . . . ."
4. Wyo. CONST. art. 16, § 5.
5. Wyo. CONST. art. 16, § 5.
6. 73 Wyo. 371, 379, 279 P.2d 472, 474 (1955). The court was speaking in the context of municipal tax limitations, but the reasoning is equally applicable to indebtedness limitations of all political subdivisions.

parent the farmers of the constitution thought these limitations would suffice to provide the necessary capital to perform the governmental functions essential to the convenience, safety and happiness of the citizens of the governmental unit.

The framers of the constitution could not have anticipated the tremendous growth now occurring. The basic problem is that money for capital expansion is necessary prior to the time the assessed valuation increases to support it. To the extent that the full indebtedness limit has not been reached the problem is largely nonexistent. Assuming the subdivision is not a credit risk, all that is required is the issuance of bonds. The real problem lies after the limitation has been reached.

The constitutional limitation on indebtedness was long ago partially eased. In *Laverents v. City of Cheyenne*,<sup>7</sup> the Wyoming Supreme Court joined the majority of courts in holding that revenue bonds are not to be included in determining the extent of governmental indebtedness. It reasoned that the purpose of the limitation was to prevent the diversion of extensive government tax revenues in the future to pay off debts. Where the governmental unit cannot tax to repay the bonds and it cannot suffer liability if the bonds are not repaid, the danger does not exist.<sup>8</sup> When the project generates sufficient funds to repay the bonds, or another source of revenue can be pledged,<sup>9</sup> the project can be financed with revenue bonds and the limitation avoided.

Water and sewer systems and possibly garbage disposal sites and hospitals can be financed using revenue bonds because they generate revenue. *Laverents* held fees paid for receipt of sewer service not to be taxes<sup>10</sup> and thus effectively decided that all such user fees do not constitute the diversion

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7. 67 Wyo. 187, 217 P.2d 877 (1950).

8. 67 Wyo. 187, 202-03, 217 P.2d 877, 882-83 (1950).

9. In order to be salable, the adequacy of the source of revenue to repay the bond must be unquestioned in the investor's mind. The slightest doubt would render the bonds directly unmarketable or unmarketable within the legally prescribed rates.

10. *Laverents v. City of Cheyenne* 67 Wyo. 187, 209-11, 217 P.2d 877, 885-86 (1950).

of tax monies for debt payment within the intent of the indebtedness limitation.

In *Banner v. City of Laramie*,<sup>11</sup> the Wyoming Supreme Court greatly expanded the special fund doctrine under which revenue bonds are excluded from the indebtedness calculation. The court's specific holding was that the revolving fund secured by contributions from gasoline and cigarette tax revenues did not constitute an indebtedness because the use of such excise tax funds was purely contingent.<sup>12</sup> The court went on to indicate that the only debts contemplated by the constitutional limitation were those secured by the general credit of the governmental unit which must be retired by use of the general property tax.<sup>13</sup> This very narrow reading of the constitutional limitation almost completely eliminates the limitation as a barrier. With the multitude of revenue sources capable of being pledged as security, bond issuance is virtually unlimited.<sup>14</sup> A partial list of such sources for municipalities includes federal revenue sharing funds, user fees, and cigarette, liquor, gasoline and sales tax revenues.

There remain several possible reasons political subdivisions were seeking state participation in the financing realm. The most significant is the possibility of lower costs for the funds because of lower interest rates or even outright grants. Granting state funds to one community to provide for con-

11. 74 Wyo. 429, 289 P.2d 922 (1955). This case and this problem area are tangentially discussed in Note, *Municipal Assistance to an Improvement District*, 11 WYO. L.J. 180 (1957).

12. *Banner v. City of Laramie*, 74 Wyo. 429, 445, 289 P.2d, 922, 927 (1955).

13. *Id.* at 445, 289 P.2d at 928-29.

14. School districts constitute the biggest exception to the ability of most subdivisions to finance fully through revenue bonds. Since schools do not generate revenue the *Laverents* user fee approach is inadequate. The broader pledge of any source of revenue other than property tax as approved in *Banner* would seem to be available however. In *Sweetwater County Planning Committee for the Organization of School Districts v. Hinkle*, 491 P.2d 1234 (Wyo. 1971), the Wyoming Supreme Court indicated that it may be inclined to follow the *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) approach in holding variations in educational expenditures within the state unconstitutional. Since this decision, the Wyoming electorate has rejected a constitutional amendment creating a state-wide school levy which would have alleviated the disparity in current school financing between districts and would have eventually made uniform the availability of funds for capital improvements. For a further discussion of the problem see Comment, *Equal Protection and the Financing of Public Education in Wyoming*, 8 LAND & WATER L. REV. 273 (1973).

struction of a service facility and not to every community would mean that residents of that community would be paying less than residents of a community not receiving such a grant, all other things being equal. However, all other things are not equal. It is arguable that the quality of life in a trailer house impact area is considerably below that in stable communities and if more services can be provided in the hard hit areas for the same cost to the individual taxpayer perhaps that is the least the state can do. This argument has even more appeal when it is not the other taxpayers of the state but the coal and its consumers that caused the problem in the first place which bear the cost. The same arguments can be made when lower than competitive interest rates are charged on state loans.

Another conceivable reason for desiring state participation is to decrease transaction costs caused by floating relatively small bond issues. Bond issuing expenses are largely fixed, regardless of the size of the bond issue. It costs little more to advertise a \$100 million bond issue than it does a \$1 million issue. Similarly, state personnel would seem to be able to gain access to money markets more readily than would numerous individuals from smaller governmental units. This advantage may not rest exclusively with borrowing from the state however. Deputy Treasurer Richard L. Hogoboom says the Treasurer's office is considering the merits of a bond bank arrangement in which that office acts as a conduit for floating loans for smaller governmental units. This system is reportedly working well in Vermont and Puerto Rico, but the final judgment is not yet in. State loans and bond banks are in no way inconsistent. The state merely acts as an agent to the extent the subdivisions borrow from other sources and as an investor or banker to the extent it loans.<sup>15</sup>

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15. Two other possible reasons the governmental units might prefer borrowing from the state over floating bonds are the hopes for decreasing the time-lag inherent in bond issues and avoiding having an election on the debt. Bond issuance takes time, not only because of the need to submit the proposals to a vote, but also because of the necessity to formulate the issue, advertise, and receive bids back. Whether any time would be saved by borrowing from the state is questionable. The state generally does not have spare cash laying around to be loaned. In addition the state agency making loans must fully consider each application to avoid waste. The election question is discussed more fully in the text p. 587 *infra*.

In view of these ulterior motives and the effective judicial abolishment of the indebtedness limitation twenty years ago, clearly the challenge the legislature faced was primarily an opportunity to shift and mitigate the social costs of producing coal rather than a constitutional crisis posed by the debt limitation.

### THE LEGISLATIVE RESPONSE

#### 1. *Joint Powers Act*

In 1974, the Wyoming Legislature enacted the Joint Powers Act<sup>16</sup> which authorized the Farm Loan Board to make loans totaling \$20 million with the interest rates to be between four and eight per cent and loans to be repaid within forty years. Since 1921, the Farm Loan Board has been authorized to make loans to provide for the purchase of farm land, buildings, equipment, and to liquidate indebtedness of farm owners.<sup>17</sup> In 1951, it was given additional authority to loan to political subdivisions and irrigation districts for the purpose of soil and water conservation and utilization,<sup>18</sup> although this was restricted four years later by amendments limiting these loans to water conservation and utilization.<sup>19</sup> Finally in 1974 with the passage of the Joint Powers Act, the Farm Loan Board was authorized to make loans to political subdivision for other purposes.

At the time of this writing the Board has exercised its general authority under the act to approve<sup>20</sup> loans totaling \$11 million. Included are loans of \$4 million to Sweetwater County and the City of Rock Springs for the hospital now in the preliminary stages of construction, \$1.5 million to the City of Kemmerer for construction of water and sewer facilities,

16. Ch. 2 [1974] Wyo. Sess. Laws 85.

17. WYO. STAT. § 11-619 (1957). An amendment to Section 11-640(a) by the 1975 Legislature increased the Farm Loan Board's authority to loan for this purpose to \$30,000,000. Ch. 40 [1975] Wyo. Sess. Laws 40.

18. WYO. STAT. §§ 11-653 to -656 (1957).

19. WYO. STAT. § 11-656 (Supp. 1973).

20. The word "authorized" is used advisedly. No money had actually passed hands until the legislature met in 1975 to correct deficiencies in the powers of the joint powers board.

and two loans to the City of Gillette for sewer and water systems.<sup>21</sup>

These loans do not constitute debts of these political entities for purposes of the indebtedness limitation because of the method used for generating funds for repayment.<sup>22</sup> Gillette imposed a fee on sewer hookups<sup>23</sup> and raised their water rates across the board.<sup>24</sup> Rock Springs and Sweetwater County will look first to user fees from hospital patients and make up the balance with revenue sharing funds. Kemmerer has a more complicated plan ultimately based on a special assessment district composed of the four large industries operating in its region. Because of these methods of refinance, these debts could also have been financed with revenue bonds secured by special reserve funds without being included as debt for purposes of the constitutional limitation.<sup>25</sup>

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21. Interview with Guy Sturlin, Auditor with the Farm Loan Board, Cheyenne, Wyo., March 19, 1975.
  22. Some jurisdictions, by statute or judicial construction, do not include bonds issued by joint powers boards in determining the extent of debt of the participating agencies. Beebe, Hodgman, Sutherland, *Joint Powers Authority Revenue Bonds*, 41 S. CAL. L. REV. 19, 53 (1968). Section 9-18.15 of the Wyoming Act limits joint powers boards' authority to accrue debt to that of the participating agencies. WYO. STAT. § 9-18.15 (Interim Supp. 1974). Section 9-18.18 (a) (ii) specifically provides that the bonds shall be issued by the separate agencies rather than by the board as a distinct agency, WYO. STAT. § 9-18.18 (a) (ii) (Interim Supp. 1974).
  23. These hookup fees are an example of the imposition of conditions upon the enjoyment of a municipality's services. The basic approach is to impose fees on, or require land dedications to public use by, the home developers. The developers in turn pass the cost to the new residents who are thus forced to pay a presumably more equitable share of the burden on local government imposed by their presence. See Comment, *Allocating the Burden of Increased Community Costs Caused by New Developments*, 1967 U. OF ILL. L. F. 318 (1967) and sources cited therein.
  24. This city-wide increase issue was once one of the battles in the war over whether special fund revenue bonds constituted debt. In *Boe v. Foss*, 76 S.D. 295, 77 N.W. 2d 1 (1956), the South Dakota Supreme Court held that pledging revenue from existing facilities made an otherwise acceptable non-debt into a debt because taxes would be raised to offset this loss of revenue. See Comment, *The Judicial Demise of State Constitutional Debt Limitations*, 56 IOWA L. REV. 646 (1971). In *Laverents v. City of Cheyenne*, 67 Wyo. 187, 217 P.2d 877 (1950), the Wyoming Supreme Court adopted the more liberal special reserve fund doctrine in holding that revenue from an entire system could be used to repay bonds issued for expansion.
  25. The question then becomes why did these governmental units go to the state in the first place. The discussion in the text p. 580 *supra* and note 15 *supra* suggests several possibilities. Guy Sturlin, the auditor with the Farm Loan Board, indicates the avoidance of facing the voters in a bond election may have been even more important. See text p. 587 *infra*.

## 2. *Wyoming Community Development Act*

In 1975 the Legislature took more extensive action. It proposed a constitutional amendment raising the debt limitation; it imposed a special tax on coal with the funds to be used for grants to impact areas; and, finally, it created a new commission with power to borrow up to \$120 million and loan it to the state's subdivisions.

The "keystone"<sup>26</sup> act in the Select Committee to Study Industrial Development Impact<sup>27</sup> package is the Community Development Act.<sup>28</sup> The Act begins by creating the Wyoming Community Development Authority<sup>29</sup> headed by a ten member board.<sup>30</sup> This authority is vested with a broad range of powers, the most important of which are to acquire, hold title to,<sup>31</sup> and sell any civic or water project,<sup>32</sup> lend money to municipalities<sup>33</sup> and state agencies,<sup>34</sup> borrow money by issuing its own negotiable bonds,<sup>35</sup> and secure such borrowing by pledging its sources of revenue,<sup>36</sup> and lend money to private mortgage lenders.<sup>37</sup>

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26. The term belongs to the measure's Senate floor manager, Senator Ostland. *Wyoming State Tribune*, March 12, 1975, at 1 col. 1.
  27. This temporary committee was formed two years ago to formulate a comprehensive plan for meeting industrial impact.
  28. Ch. 188 [1975] *Wyo. Sess. Laws* 366. It will become WYO. STAT. §§ 9-826 to -848 (Supp. 1975).
  29. WYO. STAT. § 9-829 (Supp. 1975).
  30. WYO. STAT. § 9-829(a) (Supp. 1975). The governor and treasurer are voting members of the board but the executive director of the authority is a nonvoting member. Not more than four board members can be of the same political party.
  31. WYO. STAT. § 9-830(f) (Supp. 1975).
  32. WYO. STAT. § 9-830(g) (Supp. 1975).
  33. Defined in WYO. STAT. § 9-828(n) (Supp. 1975) to mean any political subdivision of the state.
  34. WYO. STAT. § 9-830(n) (Supp. 1975). Senate Enrolled Act 82 which becomes WYO. STAT. § 24-125 (Supp. 1975) specifically gives the State Highway Commission power to borrow from the Community Development Authority. The loans are limited to financing the construction of highways necessitated by expansion of mineral extraction activities and industrial expansion in general.
  35. WYO. STAT. § 9-830(o) (Supp. 1975).
  36. WYO. STAT. § 9-830(p) (Supp. 1975).
  37. WYO. STAT. § 9-830(v) (Supp. 1975). *See also* WYO. STAT. § 9-832 (Supp. 1975). This loan program to private mortgage lenders and purchasers of private mortgages may turn out to be the most important part of the Act. Section 9-832(f) (i) requires as a precondition that the authority find that traditional mortgage lending resources in the community are incapable of adequately financing the housing needs. The necessity for formulating rules and establishing procedures will inevitably delay rapid utilization and only time will tell whether it is significant. WYO. STAT. § 9-832 (f) (i) (Supp. 1975).



Prior to any acquisition or construction of a civic or water project, the authority must find an acute need for the project, that it cannot be created with conventional financing or planning sources, that the project will be purchased by or leased to a municipality or state agency.<sup>38</sup>

Section 9-834<sup>39</sup> enables municipalities to purchase or lease projects<sup>40</sup> from the authority and pledge in repayment moneys derived from user fees from the project, loans or grants to the municipality, and the proceeds of excise taxes. This enumeration of repayment sources omits general property taxation which leads one to suspect it was drafted within the mold of *Laverents*<sup>41</sup> and *Banner*<sup>42</sup> not to constitute debts of the municipalities within the constitutional limit. Section 9-835<sup>43</sup> specifically empowers municipalities and state agencies to cooperate on projects including the sharing of costs and imposition of taxes.

The bonds issued by the authority are precluded from being an indebtedness of the state<sup>44</sup> and are secured by types of special funds which under *Banner*<sup>45</sup> are not included in the state's own indebtedness limitation.<sup>46</sup> The principal forms of security available are the assignment of authority revenues, mortgages of projects, and assignments of leased project payments.<sup>47</sup> The most striking of the authority's revenues which it can pledge as security is the deposit in a special reserve fund of one-half of one per cent out of the mineral excise tax up to the amount of principal and interest due on the bonds secured by the fund in any succeeding year.<sup>48</sup> In ad-

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38. WYO. STAT. § 9-833 (Supp. 1975).

39. WYO. STAT. § 9-834 (Supp. 1975).

40. Such lease arrangements avoid any question that the municipality is incurring any indebtedness. See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL GOVERNMENT INDEBTEDNESS 34 (1961) (hereinafter cited as ADVISORY COMMISSION).

41. *Laverents v. City of Cheyenne*, 67 Wyo. 187, 217 P.2d 877 (1950).

42. *Banner v. City of Laramie*, 74 Wyo. 429, 289 P.2d 922 (1955).

43. WYO. STAT. § 9-833 (Supp. 1975).

44. WYO. STAT. § 9-836(b) (Supp. 1975).

45. *Banner v. City of Laramie*, 74 Wyo. 429, 289 P.2d 922 (1955).

46. WYO. CONST. art 16, § 1 limits state indebtedness to one per cent of the assessed valuation of taxable property.

47. WYO. STAT. § 9-838 (Supp. 1975).

48. WYO. STAT. § 9-839(b) (Supp. 1975).

dition, provisions are made for the deposit, subject to legislative approval, of state general funds to ensure adequate funds for the payment of interest and principal due in the next succeeding year.<sup>49</sup> The contingency of legislative approval still suffices to preclude this from making the bonds debt under *Banner*.<sup>50</sup> All in all, the bond's security would seem sufficient to eliminate any risk factor from driving up the interest cost to the state. In other provisions of the Act, the bondholders' remedies are spelled out,<sup>51</sup> other state agencies are permitted to loan manpower to the authority,<sup>52</sup> the authority is exempted from taxation,<sup>53</sup> and the authority is permitted to contract with private interests in which its directors have a financial interest.<sup>54</sup>

The creation of an agency at the state level with authority to borrow and then fund all its loans from its own borrowings is an important factor in the Community Development Act. Choosing this borrowing to loan approach deliberately avoids reliance upon existing funds available at the state level.<sup>55</sup> Borrowing to loan enables the state to avoid losing income it receives as a result of the difference in interest rates at which it can borrow and invest money. Unlike an ordinary investor, the state can earn approximately two or three per cent more<sup>56</sup> on its investments than it has to pay when it borrows. This peculiar fact results because state bonds are not taxable in

49. WYO. STAT. § 9-839(d) (Supp. 1975).

50. *Banner v. City of Laramie*, 74 Wyo. 429, 289 P.2d 922 (1955).

51. WYO. STAT. § 9-844 (Supp. 1975).

52. WYO. STAT. § 9-846 (Supp. 1975).

53. WYO. STAT. § 9-841 (Supp. 1975).

54. WYO. STAT. § 9-848 (Supp. 1975).

55. The 1974 legislature proposed, and the electors of Wyoming ratified, a constitutional amendment creating a permanent mineral fund out of one and one-half per cent of the gross coal, oil shale, petroleum, natural gas and such other minerals as the Legislature might decide to designate. WYO. CONST. art 15, § 19 (appearing as Original Joint House Resolution 2A [1974] Wyo. Sess. Laws III). The last sentence of the amendment enables the legislature to establish terms and conditions whereby monies in the fund can be loaned to the state's political subdivisions. WYO. STAT. § 39-227.10 (Supp. 1973) provides that one half of the revenues due and owing in 1974 were to be set aside to become a part of the permanent fund if the amendment passed. The 1974 permanent fund portion totaled \$9 million with projections of an additional \$13 million to become due to it by September, 1975 according to Ray Coulson, administrator of the severance tax within the Department of Revenue. The legislature in choosing alternatives passed up substantial funds available without borrowing.

56. This "guesstimate" figure was obtained from Deputy Treasurer Richard L. Hogoboom in an interview on November 13, 1974.

the hands of investors and consequently command a lower interest rate while the state pays no taxes on its higher yield private bonds. Thus if the state borrows at five per cent and invests at eight per cent, it is three per cent of the face amount richer per year.<sup>57</sup>

The decisive provision of the whole civic project portion of the Community Development Act may well be the clause in Section 9-833<sup>58</sup> requiring, as a prerequisite to any project, a finding that the facility cannot be adequately financed by conventional sources of finance.<sup>59</sup> Conventional sources of finance is not a defined term, but revenue bonds with their judicial acceptance and long history of usage would seem to be included. The Act would thus seem to preclude any project which a municipality could finance with revenue bonds. As previously discussed, Section 9-834<sup>60</sup> limits the sources of municipal repayment to those which would support conventional revenue bonds. This portion of the Act is thus specifically limited to fighting a battle which as previously discussed is largely illusionary. This conclusion does not render the entire act nugatory,<sup>61</sup> but it leaves a question as to whether the Act fully accomplishes its purpose.

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57. Which makes one wonder why the state does not borrow a billion dollars, invest it in private bonds, support the government on the differential and abolish taxes. INT. REV. CODE OF 1954, § 103 (d) would take the state-issued bonds out of the tax exempt category. On a more serious level the question thus becomes whether this arbitrage bond section would make the interest on the bonds issued by the Wyoming Community Development Authority non-tax exempt. The arbitrage section, added by the 1969 Tax Reform Act, requires that the proceeds must be anticipated to be used directly or indirectly to acquire securities expected to yield materially higher returns than the bonds issued to become non-tax exempt. Regulation 13.4 which is a temporary rule promulgated under Section 103 (d) says the expected yield of the bonds purchased must be one-eighth of one percent higher than the bonds issued. In other words, the state may jeopardize the tax exempt status of its bonds if it charges the subdivisions one-eighth of one percent more than it is paying. The fact that the state has other funds it is investing at higher rates would not seem significant so long as there is no relationship "directly or indirectly" between the permanent mineral fund monies and the community development monies.

58. WYO. STAT. § 9-833(a) (i) (Supp. 1975).

59. The exact phrase is "by conventional planning or financing sources" which leaves open an argument that although it can be financed by conventional sources, it cannot be planned by conventional sources so that the authority's prerequisite finding is met.

60. WYO. STAT. § 9-834 (Supp. 1975).

61. The authority can still loan to municipalities without any such restrictive prerequisite findings. The municipality can thus accomplish the obtaining of a facility with state funds although an alternate route is necessary.

The Act leaves untouched any existing constitutional requirement of voting necessary for municipal indebtedness.<sup>62</sup> The provision in question is Article 16, Section 4<sup>63</sup> requiring a vote of the people of a subdivision prior to the creation of a debt in excess of the taxes for the current year. In *Town of Lovell v. Menhall*,<sup>64</sup> the Wyoming Supreme Court followed the *Laverents-Banner* line of cases in concluding that no vote was required for revenue bond type debts because they do not constitute debts in the constitutional sense. At any rate, the Wyoming statutes generally require every bond issue to be submitted to a vote prior to its sale.<sup>65</sup> The statutory definition of "bond" is sufficiently broad to include any debt incurred and specifically includes revenue bonds.<sup>66</sup> This voting requirement may provide one of the connective links between the people and their government that the constitutional limitations on debt and voting were attempting to accomplish.<sup>67</sup> The voters at least are given notice that at some time the debt will need repaying.<sup>68</sup>

### 3. *Special Coal Tax*

Probably the least publicized and most important act of the Legislature was Original House Bill 118<sup>69</sup> imposing a separate tax on coal which increases in 0.5 per cent increments until it totals two per cent on coal mined in 1978.<sup>70</sup> The tax automatically terminates when \$120,000,000 has been raised.<sup>71</sup> The money so raised is to be disbursed by the Wyo-

62. WYO. STAT. § 9-834(c) (Supp. 1975).

63. WYO. CONST. art 16, § 4.

64. 386 P.2d 109, 116 (Wyo. 1963). The decision was a 2-2 split affirmed opinion, but the dissenters did not disagree on this holding.

65. See e.g., WYO. STAT. § 15.1-411(b) (Supp. 1973) (cities and towns) and WYO. STAT. § 21.1-265 (Supp. 1973) (school districts).

66. WYO. STAT. § 22.1-296 (Supp. 1973).

67. See text pp. 589-91 *infra*.

68. WYO. STAT. § 15.1-411(b) (Supp. 1973) would seem to be applicable on its face to loans made by the Farm Loan Board under the Joint Powers Act previously discussed. Yet apparently no election has been called by any of the subdivisions whose loans have been approved by the Board.

69. Ch. 120 [1975] Wyo. Sess. Laws 167 was to amend WYO. STAT. § 39-227.1 (c) (Supp. 1975) and add subsections (f) and (g) to that section. Unfortunately ch. 125 [1975] Wyo. Sess. Laws abolished WYO. STAT. § 39-227.1 (a) through (d) (Supp. 1973). The Legislative Service Office concluded that paragraph (c) was repealed.

70. WYO. STAT. § 39-227.1(f) (Supp. 1975).

71. WYO. STAT. § 39-227.1(g) (Supp. 1975).

ming Farm Loan Board through grants or pledges to the state's political subdivisions.<sup>72</sup> The board must determine that the applicant has exhausted local revenue sources reasonably available and that the project is necessary.<sup>73</sup> Finally, not less than sixty per cent of the money must be used to finance highways, roads, and streets.<sup>74</sup>

Any grant program to political subdivisions inevitably generates some friction between the governmental units receiving grants and those not receiving grants. Section 39-227.10(d)<sup>75</sup> limits grants by the Board to those areas directly or indirectly impacted by coal development.<sup>76</sup> This limitation of funds to impact areas reflects a legislative focus on the supposed crisis in capital needs. In solving this problem, the Legislature created another by giving facilities to some areas of the state while the taxpayers of other portions of the state are paying for the same type facilities. One can only speculate whether the non-impact areas will generate sufficient political strength to remove this limitation.

Even the impact areas will obtain only limited utility from the funds provided by this act. The Act requires the funds to be used only for water, sewer, highways, roads, and streets.<sup>77</sup> Clearly the humanitarian interests of the Legislature were tempered by the coal industry's need for some return on its tax investment. Presumably, governments in impacted areas can divert some funds which would otherwise be used to build roads and sewers to other uses and thus minimize the practical effect of this limitation.

Another critical restriction is the requirement that all local sources of revenue be exhausted before the grants can be made. As previously indicated, the sources of capital funds are limited only by the availability of sources of funds capable

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72. WYO. STAT. § 39-227.10(e) (Supp. 1975).

73. WYO. STAT. § 39-227.10(f) (Supp. 1975).

74. WYO. STAT. § 39-227.10(d) (Supp. 1975).

75. WYO. STAT. § 39-227.10(d) (Supp. 1975).

76. An argument can be made that all areas of the state will directly or indirectly be affected by the impact. See Wyoming Legislative Select Committee on Industrial Development Impact, INTERIM REPORT AND RECOMMENDATIONS 5 (1974).

77. WYO. STAT. § 39-227.10(d) (Supp. 1975).

of pledging to special reserve funds for repayment. It is therefore appropriate that the Act speaks in terms of sources of funds rather than sources of capital. It is worth noting that the exhaustion of sources required here is not the "conventional sources of finances" as in the Community Development Act, but a seemingly more restrictive exhaustion of "all local revenue sources."<sup>78</sup> With ultimately \$120 million to dispose of in the form of these grants a liberal construction would seem to be called for. On the other hand, if it is too liberal, all traditional financing of sewers and streets will be discarded by the municipalities and the line at the Farm Loan Board office will be unending.

There was some initial concern that revenues would not be generated fast enough to meet the problem.<sup>79</sup> However, the Act as passed permits the board to pledge money to subdivisions prior to receipt of the tax revenues and specifically approves the subdivision pledging the funds to the Community Development Authority as security for immediate loans from it.<sup>80</sup> The board thus has what amounts to immediate grant authority of the whole \$120 million without waiting for the tax to generate the funds. If the provision in this act could be read to limit the pledges by subdivisions strictly to the Community Development Authority, the conventional sources of finance dilemma in the prior act would be solved. However, this act specifically permits repledging the Farm Loan Board pledges to other obligees subject to approval of the board. Pledges from the board would seem sufficiently secure to finance conventional revenue bonding.

#### 4. *Constitutional Amendment*

Senate Joint Resolution Number 1<sup>81</sup> takes the traditional approach to the constitutional indebtedness limitation problem. When the limitation begins to affect the amount and quality of services a government can provide, the easiest solution is to raise the limitation. This proposed constitutional

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78. WYO. STAT. § 39-227.10(f) (i) (Supp. 1975).

79. Remarks of Rep. Rex O. Arney, *Laramie Daily Boomerang*, Feb. 20, 1975 at 3, col. 1.

80. WYO. STAT. § 39-227.10(e) (Supp. 1975).

81. [1975] Wyo. Sess. Laws 472.

amendment raises the county debt ceiling from two per cent to four per cent of assessed valuation, increases the limit for cities and towns from four per cent to eight per cent, increases school district debt authority from ten per cent to fifteen per cent, and completely eliminates any constitutional barrier on water supply and sewer disposal.

Adjusting the indebtedness limitation may be accomplished without a constitutional amendment simply by raising the percentage of the fair market value at which property in the state is assessed. Supposedly that percentage is now twenty-five per cent<sup>82</sup> but it varies considerably within the state.<sup>83</sup> This variation within the state further impairs the already tenuous relationship between a subdivision's capability to refund its debt and the indebtedness limitation.<sup>84</sup>

With the historical expansion of the debt limits<sup>85</sup> and the narrow judicial construction of what debts fall into the limits, it becomes necessary to question the need for any constitutional limit on borrowing. McQuillen's series collects numerous sources on the purpose as follows:

Debt-limitation provisions are designed to promote the common good and welfare. It is their purpose to serve as a limit to taxation and as a protection to taxpayers; to maintain municipal solvency, both governmental and proprietary, and effectually to

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82. WYOMING TAXPAYERS ASSOCIATION, WYOMING ROUND—UP 1968 TAX LEVIES 2 (1968).
  83. A. BUEHLER, A SUMMARY OF THE WYOMING TAX STUDY 13 (1966). In 1960 the state assessed roughly half of all property and the county assessed the remainder. J. THOMPSON & V. PICARD, FINANCING MUNICIPAL GOVERNMENT IN WYOMING 16 (1960).
  84. See Comment, *The Judicial Demise of State Constitutional Debt Limitations*, 56 IOWA L. REV. 646 (1971) and ADVISORY COMMISSION, *supra* note 42, at 66.
  85. The history of WYO. CONST. art 16, § 5 is a history of gradual expansion in the authority to contract debt. The original provision limited indebtedness to two per cent with four per cent allowed for sewerage. WYO. CONST. art 16, § 5 (1889). A 1919 amendment created authority for school districts to borrow up to four per cent of assessed valuation. Senate Joint Resolution Number 6, [1919] Wyo. Sess. Laws. An amendment proposed in 1953 and ratified in 1954 raised school district's authority from four per cent to eight per cent, House Joint Resolution Number 1, [1953] Wyo. Sess. Laws and a 1961-62 amendment doubled cities' and towns' borrowing authority from two per cent to four per cent of assessed valuation and increased school districts' authority to ten per cent. With this expansionary history, even prior to the latest proposed increase the use of the term limitation becomes questionable.

protect persons residing in municipalities from abuse of their credit, and the consequent oppression of burthensome [sic], if not ruinous taxation.<sup>86</sup>

These restrictions were written into state constitutions primarily as the result of financial embarrassments suffered by states and municipalities during the financial crises of the mid-1800's caused by overborrowing.<sup>87</sup> The ultimate fact is that loans have to be repaid and present goods and services can very well sacrifice future goods and services if extensive borrowing is used. The tremendous expansion in Wyoming's population might constitute such an emergency that some mortgaging of the future may be necessary. With the expansive power given municipalities to borrow outside the scope of the indebtedness limitation, there remains some question as to the necessity of expanding the limits.

#### CONCLUSION

The 1975 Legislature faced a largely mythical problem in the constitutional limitation on indebtedness. Judicial construction made those limitations virtually meaningless twenty years ago by holding that reserve fund revenue bonds do not constitute debt of the issuing political subdivision.

The problem in capital financing faced by the political subdivisions is largely the duty it has to their people to provide the best possible municipal service at the least possible cost. In that light, the most significant act is the coal tax with its grants to the subdivisions. With that act the Legislature was able to shift the costs of some essential local services to people other than the people receiving the benefits. Phrased another way, the Legislature was able to internalize the social costs of coal production so that coal consumers pay more nearly the human costs of production.

The importance of the Community Development Act and the loan provisions of the Joint Powers Act are largely ob-

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86. 15 McQUILLEN, MUN. CORP. § 41.02 (3rd ed. 1970).

87. See Comment, *The Judicial Demise of State Constitutional Debt Limitations*, 56 IOWA L. REV. 646 (1971).



viated by the fact that these loans can be made through traditional means without state involvement. To the extent that methods of financing have reached their constitutional limit, the proposed constitutional amendment would eliminate them with the least complexity.

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