**COUNTY**

**PUBLIC INDEBTEDNESS**

**LEGAL COMPLIANCE AUDIT GUIDE**

**PUBLIC INDEBTEDNESS**

Introduction

The power of a county to incur indebtedness is governed by statutory provisions.

Each type of borrowing instrument may be governed by different statutes. Therefore, it is essential that the auditor examine the specific statutes that are applicable to the particular borrowing transaction.

This questionnaire is intended only to highlight certain general provisions of the Minnesota statutes relating to indebtedness and is not intended to cover all questions that may be pertinent.

Which of the following types of borrowing has the county been involved with during the past year? Please check all forms of borrowing that have either been issued or redeemed during the past year or which are currently outstanding at year‑end.

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|  | **During the Year** |
| **LONG-TERM BORROWING:** | **Issued** | **Outstanding** |
|  General Obligation Bonds (Minn. Stat. ch. 475) |  |  |
|  Revenue Bonds (Minn. Stat. ch. 475) |  |  |
|  General Obligation Revenue Bonds (Minn. Stat. ch. 475) |  |  |
|  County Capital Improvement Bonds (Minn. Stat. § 373.40) |  |  |

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|  | **During the Year** |
| **SHORT-TERM BORROWING:** | **Issued** | **Outstanding** |
|  Loans Funded or Secured Under United States Agriculture Department Programs (Minn. Stat. § 465.73) |  |  |
|  Temporary Improvement Bonds (Minn. Stat. § 429.091, subd. 5) |  |  |
|  Emergency Certificates of Indebtedness (Minn. Stat. § 475.754) |  |  |
|  Certificates of Indebtedness (Minn. Stat. §§ 412.301,366.095, 123B.61) |  |  |
|  Warrants Not Paid for Want of Funds (Minn. Stat. §§ 385.31, 385.32, 384.13,  385.05, 383A.50) |  |  |
|  Reverse Repurchase Agreements/Securities Lending Agreements (Minn. Stat.  § 118A.05) |  |  |
|  Lease Purchase Agreements (Minn. Stat. § 465.71) |  |  |
|  Emergency Debt Certificates (Minn. Stat. § 475.755)  |  |  |

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| Part I. Answer the following questions with respect to all types of**indebtedness that were issued during this fiscal year:** |
| § 475.51, et. seq. | A. | Was County/Board approval obtained for new debt issued during this fiscal year? |  |  |  |
| § 475.58, subd. 2 | B. | For debt funding or refunding obligations issued under Minn. Stat. § 475.58, subd. 2: |  |  |  |
|  |  | 1. | Did the entity’s outstanding gross debt exceed 1.62% of its estimated market value? |  |  |  |
|  |  | 2. | Was a listing of the indebtedness to be funded or refunded prepared by the treasurer and recording officer and filed in the office of the recording officer? |  |  |  |
| § 475.58subd. 2 |  | 3. | Was the resolution, stating the amount of bonds to be issued and referring to the listing of indebtedness to be funded or refunded, published in the legal newspaper once each week for two successive weeks? |  |  |  |
|  |  | Note: Refunding obligations may be authorized by Minn. Stat. § 475.67 for which the notice required here is not applicable. |  |  |  |
|  | C. | Considering the issuance of the obligations, will the net debt (as defined in Minn. Stat. § 475.51, subd. 4) of the county not exceed the net debt limit as is applicable below: |  |  |  |
| § 475.53,subd. 4 |  | 1. | Does the net debt not exceed three percent of the estimated market value of taxable property in the county?  |  |  |  |
| § 475.58,subd. 1 | D. | Was the request to issue the obligations submitted for approval at an election? |  |  |  |
| § 475.58,subd. 4 |  | 1. | If so, were the proceeds only spent: |  |  |  |
|  |  |  | a. | (1) for the purposes stated in the ballot language; or (2) to pay, redeem, or defease obligations and interest, penalties, premiums, and costs of issuance of the obligations; and |  |  |  |
|  |  |  | b. | were none of the proceeds spent for a different purpose or for an expansion of the original purpose without approval by a majority of the electors voting on the question of changing or expanding the purpose of the obligations? |  |  |  |
| § 475.58,subd. 1 |  | 2. | If not, was this issuance exempt from approval by the electors for one of the following reasons: |  |  |  |
|  |  |  | It represented an obligation characterized as: |  |  |  |
|  |  |  | a. | any unpaid judgment against the county; |  |  |  |
|  |  |  | b. | refunding obligations; |  |  |  |

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|  |  |  | c. | an improvement or improvement program, the obligation for which is payable wholly or partly from the proceeds of special assessments levied upon property specially benefited by the improvement or by an improvement within the improvement program or from tax increments, including obligations which are the general obligations of the county, if the county is entitled to reimbursement in whole or in part from the proceeds of such special assessments or tax increments and not less than 20 percent of the cost of the improvement or the improvement program is to be assessed against benefited property or is to be paid from the proceeds of federal grant funds or a combination thereof, or is estimated to be received from tax increments. |  |  |  |
|  |  |  | d. | an obligation which is payable wholly from the income of revenue producing conveniences; |  |  |  |
|  |  |  | e. | an obligation exempt from electoral approval by the terms of the home rule charter; |  |  |  |
|  |  |  | f. | exempt under the provisions of a law which permits the issuance of obligations of a municipality without an election; |  |  |  |
|  |  |  | g. | an obligation to fund pension or retirement fund liabilities of a county pursuant to Minn. Stat. § 475.52, subd. 6; |  |  |  |
| § 373.40, subd. 2 |  |  | h. | issued under a capital improvement plan under Minn. Stat. § 373.40,where notice was published at least 14 but not more than 28 days before the county held a hearing for public comment on issuing the bonds under this section; |  |  |  |
|  |  |  | i. | issued under Minn. Stat. §§ 469.1813 to 469.1815 (property tax abatement authority bonds), if the bonds are not used for a purpose prohibited under § 469.176, subd. 4g, para. (b);  |  |  |  |
| § 475.58,subd. 1 (10) |  |  | j. | issued to fund postemployment benefit liabilities pursuant to Minn. Stat. § 475.52, subd. 6, of a county, and were the liabilities limited to: |  |  |  |
|  |  |  |  | (1) | satisfying the requirements of Minn. Stat. § 471.61, subd. 2b (insurance continuation); and |  |  |  |
|  |  |  |  | (2) | other postemployment benefits, which the county no longer provides to employees hired after a date before the obligations are issued? |  |  |  |
| § 475.755 |  |  | k. | issued under Minn. Stat. § 475.755 (emergency debt certificates)? |  |  |  |
| § 475.58,subd. 3a |  |  | l. | issued to refund existing debt of an indoor ice arena that is used predominantly for youth athletic activity as provided in Minn. Stat. § 475.58, subd. 3a; |  |  |  |
| § 475.58,subd. 3b |  |  | m. | issued for street reconstruction and bituminous overlays, and were the conditions of Minn. Stat. § 471.58, subd. 3b met? |  |  |  |

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| § 400.101 |  |  | n. | issued for solid waste management purposes? |  |  |  |
|  |  |  |  | Examples are: |  |  |  |
|  |  |  |  | (1) | for acquisition or betterment of solid waste facilities, closure, or postclosure; |  |  |  |
|  |  |  |  | (2) | contingency costs, related transmission facilities, or property or property rights for the facilities. |  |  |  |
| § 475.58,subd. 1a | E. | If the issuance of obligations for the same purpose and in the same amount has previously been proposed to the electors and voted down, did this election take place at least 180 days after the first election? |  |  |  |
|  | F. | If this is the third request for the same purpose and in the same amount, did this election take place at least one year after the second election? |  |  |  |
| § 475.60,subds. 2 and 3 | G. | Was the sale of these obligations in accordance with the public notice and public sale requirements of Minnesota statutes? |  |  |  |
| § 475.60,subd. 2 |  | 1. | If no, was the sale exempt from public sale due to any of the following reasons: |  |  |  |
|  |  |  | a. | obligations issued under the provisions of a home rule charter, or under a law specifically authorizing a different method of sale or authorizing them to be issued in such a manner as the council/board may determine; |  |  |  |
|  |  |  | b. | obligations sold by the municipality in an amount not exceeding the total sum of $1,200,000 in any 12‑month period; |  |  |  |
|  |  |  | c. | except for those issued by a school board, obligations issued in anticipation of the collection of taxes or other revenues appropriated for expenditure in a single year, if sold in accordance with the most favorable of two or more proposals solicited privately; |  |  |  |
|  |  |  | d. | obligations sold to any board, department, or agency of the United States of America or the State of Minnesota, in accordance with the rules of the board, department, or agency; |  |  |  |
|  |  |  | e. | obligations issued to fund pension and retirement fund liabilities under Minn. Stat. § 475.52, subd. 6; obligations issued with tender options under Minn. Stat. § 475.54, subd. 5a; crossover refunding referred to in Minn. Stat. § 475.67, subd. 13; and any issue of obligations comprised in whole or in part of obligations bearing interest at a rate or rates which vary periodically referred to in Minn. Stat. § 475.56; |  |  |  |
|  |  |  | f. | obligations to be issued for a purpose, in a manner, and upon terms and conditions authorized by law, if the County Board, on the advice of bond counsel or special tax counsel, determines that interest on the obligations cannot be represented to be excluded from gross income for purposes of federal income taxation; |  |  |  |
|  |  |  | g. | obligations issued in the form of an installment purchase contract, lease purchase agreement, or other similar agreement; |  |  |  |
|  |  |  | h. | obligations sold under a bond reinvestment program; or |  |  |  |

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|  |  |  | i. | obligations which the County Board determines shall be sold by private negotiation if the municipality has retained an independent financial advisor? |  |  |  |
| § 475.55,subd. 1 | H. | Were all obligations signed manually by one officer of the county or by a designated authenticating agent? |  |  |  |
| § 475.65 | I. | Did the treasurer account for the receipt and disbursement of the proceeds of the issue, for the use named in the resolution, in a separate fund or account in the official financial records of the county? |  |  |  |
| § 475.61,subd. 2, &§ 475.62 | J. | Was the appropriate information reported to the county auditor for all new issues of indebtedness so that the county register could be updated? (Information to include: the purpose and date of the issue; the number, denomination, interest rate, and maturity date of each bond; place and time of payment of principal and interest; and the amount of the tax levied for the payment thereof.) |  |  |  |
| § 471.69 | K. | Limitation on Outstanding Warrants and Orders |  |  |  |
|  |  | 1. | Did the county not contract debt, or issue any warrant or order in anticipation of taxes levied or to be levied, in excess of: |  |  |  |
|  |  |  | - | the average amount actually received from tax collections for the last three years, plus |  |  |  |
|  |  |  | - | ten percent? |  |  |  |
|  | The Minn. Stat. § 471.69 limitations do not apply to government entities wherein the mineral net tax capacity exceeds 25 percent of its net tax capacity |  |  |  |
| **Part II. Answer only the questions below that relate to the specific types of** **debt that were issued during the current fiscal year:** |
| § 475.61,subd. 1 | A. | GENERAL OBLIGATION BONDS: |  |  |  |
|  |  | 1. | Did the county, prior to delivery of the obligations, levy by resolution a direct general ad valorem tax upon all taxable property to be spread each year of the obligations? |  |  |  |
|  |  | 2. | Were the levies specified and such that if collected in full they, together with estimated collections of special assessments and other revenues pledged for payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments on the obligations when due? |  |  |  |
| § 373.01,subd. 3 | B. | CAPITAL NOTES: |  |  |  |
|  |  | 1. | Were the capital notes issued within applicable county debt limits? |  |  |  |
|  |  | 2. | Were the notes issued for “capital equipment,” i.e., public safety equipment, ambulance, and other medical equipment, road construction or maintenance equipment, and computer hardware and software, whether bundled with machinery or equipment or unbundled together with application development services and training related to the use of the computer hardware or software, having an expected useful life at least equal to the term of the notes? |  |  |  |

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|  |  | 3. | Were the notes payable in ten or less years? |  |  |  |
|  |  | 4. | Was a tax levy made, in accordance with Minn. Stat. § 475.61, for the payment of principal and interest on the notes? |  |  |  |
|  |  | 5. | Did the county board, by resolution, issue the notes? |  |  |  |
| § 465.73 | C. | USDA RURAL BUSINESS-COOPERATIVE SERVICE, RURAL HOUSING SERVICE, OR OTHER AGENCY OF THE USDA: (For town halls, fire halls, and fire equipment only, or libraries or child care facilities if otherwise authorized by law. |  |  |  |
|  |  | 1. | Is the amount borrowed from the USDA Rural Business-Cooperative Service, Rural Housing Service, or other USDA agency, within the $450,000 statutory limit? |  |  |  |
| § 475.754 | D. | EMERGENCY CERTIFICATES OF INDEBTEDNESS:  |  |  |  |
|  |  | 1. | Do the certificates of indebtedness mature within three years? |  |  |  |
|  |  | 2. | Do the certificates of indebtedness bear interest at a rate not in excess of the allowable rate? |  |  |  |
|  |  | 3. | Are the certificates and interest thereon payable from taxes levied within existing limitations or from other available revenue? |  |  |  |
| § 471.3455 | E. | PUBLIC SAFETY EQUIPMENT - Certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease.  |  |  |  |
|  |  | - | “Public Safety Equipment” means vehicles and specialized equipment used by a fire department in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response. |  |  |  |
|  |  | - | If the County issued certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease, did the term not exceed 15 years? |  |  |  |

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| § 385.31 | F. | WARRANTS |  |  |  |
|  |  | 1. | If any warrants were presented for payment to the county treasurer when there were insufficient funds in the proper account to pay the warrants: |  |  |  |
|  |  |  | a. | Were warrants paid when sufficient funds because available in the order of their registration, and  |  |  |  |
|  |  |  | b. | Were all warrants numbered and registered in the order of presentation? |  |  |  |
|  |  | 2. | If warrants were presented when there were sufficient funds available for payment, did the county treasurer redeem the same and write: |  |  |  |
|  |  |  | a. | across the entire face of the warrant the word “redeemed,” |  |  |  |
|  |  |  | b. | the date of the redemption, and  |  |  |  |
|  |  |  | c. | his or her official signature? |  |  |  |
|  |  | 3. | If the county treasurer borrowed money from another fund to pay a warrant presented when there was insufficient money in the account upon which the warrant was drawn, was one of the following conditions met? |  |  |  |
|  |  |  | a. | The county had an estimated market value of taxable property of not less than $1,033,000,000, and the money was returned to the lending fund as soon as it became available in the borrowing fund, or |  |  |  |
| § 385.32 |  |  | b. | The county had an estimated market value of taxable property less than $1,033,000,000, the treasurer obtained the approval of the county board and county auditor, and the money was returned to the lending fund as soon as it became available in the borrowing fund and, in any event, within six months? |  |  |  |
| § 475.755 | G. | EMERGENCY DEBT CERTIFICATES  |  |  |  |
|  |  | * If at any time during a fiscal year the receipts of a county are reasonably expected to be reduced below the amount provided in the county’s budget when the final property tax levy to be collected during the fiscal year was certified and the receipts are insufficient to meet the expenses incurred or to be incurred during the fiscal year, the County Board may authorize and sell certificates of indebtedness to mature within two years or less from the end of the fiscal year in which the certificates are issued.
* The maximum principal amount of the certificates that it may issue in a fiscal year is limited to the expected reduction in receipts plus the cost of issuance. The certificates may be issued in the manner and on the terms the County Board determines by resolution.
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|  |  | 1. | If emergency debt certificates were issued, was the maturity date within two years of the end of the fiscal year in which they were issued? |  |  |  |
|  |  | 2.  | Was the principal amount of the certificates limited to the expected reduction in receipts plus the cost of issuance? |   |  |  |
|  |  | 3. | Did the County Board levy taxes for the payment of principal and interest on the certificates in accordance with section 475.61? |  |  |  |

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|  |  | 4.  | To the extent that the County issued certificates under Minn. Stat. § 475.755 to fund an unallotment or other reduction in its state aid, did the County not use the special levy authority for aid reduction under section 275.70, subd. 5 (22), or a similar or successor provision; and |  |  |  |
|  |  |  | Did it instead use the special levy authority for the repayment of indebtedness under Minn. Stat. § 275.70, subd. 5, clause (2), in order to levy under Minn. Stat. § 475.61 to fund repayment of the certificates with a levy that is not subject to levy limits? |  |  |  |

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|  | **Part III. Answer the following questions for each type of issue that was** **outstanding at some point during the fiscal year:** |
| § 475.61 | A. | Was the certified levy specified and such that it, together with estimated collections of special assessments and other revenues pledged for the payment of the obligations, will produce at least five percent in excess of the amount needed to meet the principal and interest payments when due? |  |  |  |
|  |  | 1. | If not, did the County Board adopt a resolution levying another amount of such taxes? |  |  |  |
| § 471.70 | B. | Has the principal accounting office of the county reported, on or before February 1 of each year, to the County Auditor the total amount of outstanding obligations and the purpose for which issued, as of December 31 of the preceding year? |  |  |  |

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| **Part IV. Audit Conclusion** |
| The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the client has complied with the legal provisions reviewed relating to public indebtedness. |
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| Conclusion: |  |  |  |  |  |  |
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