

Appendix A

Selected Legal Authorities Related to Implementing and Funding an Infiltration and Inflow Reduction Program

Description:

This appendix contains references to documents used in the legal analysis of the use of public funds to conduct I/I reduction work on private property.

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SELECTED LEGAL AUTHORITIES Related to Implementing and Funding an Infiltration and Inflow Reduction Program

THE WASHINGTON CONSTITUTION

Article VIII STATE, COUNTY AND MUNICIPAL INDEBTEDNESS

SECTION 7 CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

SECTION 10 ENERGY, WATER, OR STORMWATER OR SEWER SERVICES CONSERVATION ASSISTANCE. Notwithstanding the provisions of section 7 of this Article, any county, city, town, quasi municipal corporation, municipal corporation, or political subdivision of the state which is engaged in the sale or distribution of water, energy, or stormwater or sewer services may, as authorized by the legislature, use public moneys or credit derived from operating revenues from the sale of water, energy, or stormwater or sewer services to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment for the conservation or more efficient use of water, energy, or stormwater or sewer services in such structures or equipment. Except as provided in section 7 of this Article, an appropriate charge back shall be made for such extension of public moneys or credit and the same shall be a lien against the structure benefited or a security interest in the equipment benefited. Any financing for energy conservation authorized by this article shall only be used for conservation purposes in existing structures and shall not be used for any purpose which results in a conversion from one energy source to another. [AMENDMENT 91, 1997 House Joint Resolution No. 4209, p 3065. Approved November 4, 1997.]

WASHINGTON STATE STATUTES

Storm Water and Sewer Utility Conservation Statute. This statute was enacted in 1998 to implement Washington State Constitutional Amendment No. 91 (above) by authorizing a conservation loan program for private homeowners:

RCW 35.67.360

Conservation of storm water and sewer services -Use of public moneys.

Any city, code city, town, county, special purpose district, municipal corporation, or quasi-municipal corporation that is engaged in the sale or distribution of storm water or sewer services may use public moneys or credit derived from operating revenues from the sale of storm water or sewer services to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of storm water or sewer services in such structures or equipment. Except for the necessary support of the poor and infirm, an appropriate charge-back shall be made for the extension of public moneys or credit. The charge-back shall be a lien against the structure benefited or a security interest in the equipment benefited. [1998 c 31 § 2.]

Metro Statute

RCW 35.58.200. Powers relative to water pollution abatement.

If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, it shall have the following powers in addition to the general powers granted by this chapter:

- (1) To prepare a comprehensive water pollution abatement plan including provisions for waterborne pollutant removal, water quality improvement, sewage disposal, and storm water drainage for the metropolitan area.
- (2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of metropolitan facilities for water pollution abatement, including but not limited to, removal of waterborne pollutants, water quality improvement, sewage disposal and storm water drainage within or without the metropolitan area, including but not limited to trunk, interceptor and outfall sewers, whether used to carry sanitary waste, storm water, or combined storm and sanitary sewage, lift and pumping stations, pipelines, drains, sewage treatment plants, flow control structures together with all lands, property rights,, equipment and accessories necessary for such facilities. Sewer facilities which are owned by a county, city, or special district may be acquired or used by the metropolitan municipal corporation only with the consent of the legislative body of the county, city, or special districts owning such facilities. Counties, cities, and special districts are hereby authorized to convey or lease such facilities to metropolitan municipal corporations or to contract for their joint use on such terms as may be fixed by agreement between the legislative body of such county, city, or special district and the metropolitan council, without submitting the matter to the voters of such county, city, or district.
- (3) To require counties, cities, special districts and other political subdivisions to discharge sewage collected by such entities from any portion of the metropolitan area which can drain by gravity flow into such metropolitan facilities as may be provided to serve such areas when the metropolitan council shall declare by resolution that the health, safety, or welfare of the people within the metropolitan area requires such action.
- (4) To fix rates and charges for the use of metropolitan water pollution abatement facilities, .and to expend the moneys so collected for authorized water pollution abatement activities.
- (5) To establish minimum standards for the construction of local water pollution abatement facilities and to approve plans for construction of such facilities by component counties or cities or by special districts, which are connected to the facilities of the metropolitan municipal corporation. No such county, city, or special district shall construct such facilities without first securing such approval.
- (6) To acquire by purchase, condemnation, gift, *or* grant, to lease, construct, add to, improve, replace, repair, maintain, operate and regulate the use of facilities for the local collection of sewage or storm water in portions of the metropolitan area not contained within any city or special district operating local public sewer facilities and, with the consent of the legislative body of any such city or special district, to exercise such powers within such city or special district and for such purpose to have all the powers conferred by law upon such city or special district with respect to such local collection facilities: PROVIDED, That such consent shall not be required if the department of ecology certifies that a water pollution problem exists within any such city or special district and notifies the city or special district to correct such problem and corrective construction of necessary local collection facilities shall not have been commenced within one year after notification. All costs of such local collection facilities shall be paid for by the area served thereby.
- (7) To participate fully in federal and state programs under the federal water pollution control act (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.) and to take all actions necessary to secure to itself or its component agencies the benefits of that act and to meet the requirements of that act, including but not limited to the following:

- (a) authority to develop and implement such plans as may be appropriate or necessary under the act.
- (b) authority to require by appropriate regulations that its component agencies comply with all effluent treatment and limitation requirements, standards of performance requirements, pretreatment requirements, a user charge and industrial cost recovery system conforming to federal regulation, and all conditions of national permit discharge elimination system permits issued to the metropolitan municipal corporation or its component agencies. Adoption of such regulations and compliance therewith shall not constitute a breach of any sewage disposal contract between a metropolitan municipal corporation and its component agencies nor a defense to an action for the performance of all terms and conditions of such contracts not inconsistent with such regulations and such contracts, as modified by such regulations, shall be in all respects valid and enforceable. [1975 c 36 § 1; 1974 ex.s. c 70 § 6; 1971 ex.s. c 303 § 7; 1965 c 7 § 35.58.200. Prior: 1957 c 213 § 20.]

JUDICIAL AUTHORITY

The City of Tacoma v. The Taxpayers of the City of Tacoma, 108 Wash.2d 679, 743 P.2d 793 (1987). This case was a declaratory judgment action to determine the validity of a City of Tacoma electrical conservation program. The City of Tacoma enacted an ordinance authorizing Tacoma City Light to issue electric revenue bonds and use other public funds to pay for electrical conservation measures in commercial and residential structures. The ordinance was challenged as 1) going beyond the authority granted by RCW 35.92.050, the municipal utility enabling statute, and 2) authorizing an unconstitutional gift of public funds. The Supreme Court upheld the City's program on both counts, ruling that: 1) Tacoma's ordinance was validly enacted under RCW 35.92.050 because Tacoma's conservation program was the functional equivalent of purchasing electricity, and 2) Tacoma's payment for the installation of conservation equipment in private commercial and residential buildings was not an unconstitutional gift or loan of public funds under Art. 8, §7 of the Washington Constitution.