

2015 School Law Update
September 23, 2015

The Wonderful World Of Municipal Finance

Presented by:
James B. Gessford
Michael Rogers



What are we talking about? —



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Municipal Finance? —



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Municipal Finance Calendar Dates

Due Date	Duty	Authority	Responsibility of:
August 20	Co Assessor certifies valuation	§ 13-509	Assessor
September 20	Budget filed with Co levy board and State Auditor	§ 13-506	School
October 10	PTA certifies school adjusted values	§ 77-1601.02	School
October 13	School files tax request if different from the prior year with county clerk.	§ 77-1601.02	School
October 15	Levy date	§ 77-1601	Co Board
November 10	Adjusted value appeal deadline	§ 79-1016	School
December 31	Real Property and Personal Property Taxes Due – Lien Date	§ 77-203	Taxpayer


Municipal Finance? —

- **Budgeting:**
 - o The requirements and procedures of the Nebraska Budget Act are **mandatory and jurisdictional**, or budget is **"void and without effect."**
 - o [Willms v. Nebraska City Airport Authority, 193 Neb. 567, 575-576 \(Neb. 1975\)](#)



Municipal Finance? —

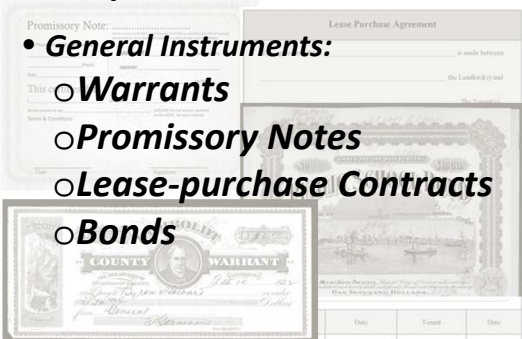
- **Key Budgeting Issues:**
 - o **Hearings** - 5-day published notice
 - o **§13-506** adopted budget different from proposed; notice published w/in 20-days with changes and reasons
 - o **§ 77-1601.02** property tax request
 - o **§13-510** emergency funds transfer
 - o **§13-511** budget amendments



Municipal Finance? —

• General Instruments:

- Warrants
- Promissory Notes
- Lease-purchase Contracts
- Bonds



Municipal Finance? —

• Inside Lid:

- Warrants - like check
- Promissory Notes - 2 yr.
- L-P Contracts - 7 yr.

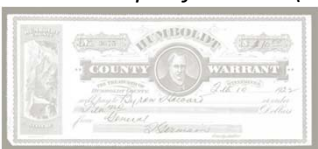
• Outside Lid:

- Bonds — (length varies)



• Warrant:

- A warrant is a written order from a first person that instructs a second person to pay specified recipient a specific amount of money or goods at a specific time. (Like check??)



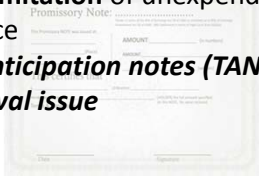
• **Warrant:**

- It is duty of president to countersign all warrants. *§79-569 and Fulk v. SD No. 8 of Lancaster County, 155 Neb. 630, 53 N.W.2d 56 (1952) & §79-569.*



• **Promissory Notes:**

- *§79-1070*- All schools district may enter into promissory notes
- **Interest** set by the school board
- Maturing not more than **2 FYs**
- **70% limitation** of unexpended balance
- **Tax anticipation notes (TAN)**
- **Renewal issue**



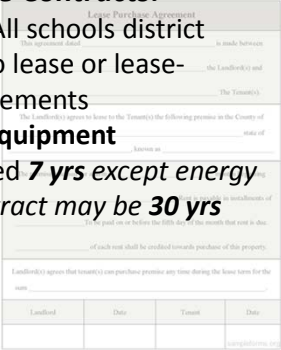
• **Promissory Notes (renewal issue):**

- Borrow \$500,000 over 2 years
- Only levy enough each year to pay off ½ principle with no funding ability to pay entire principle balance at end of 2 yrs expecting to just renew or roll over and carry forward.



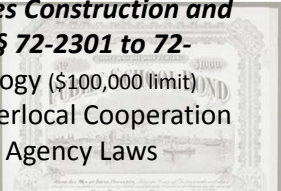
• Lease-Purchase Contracts:

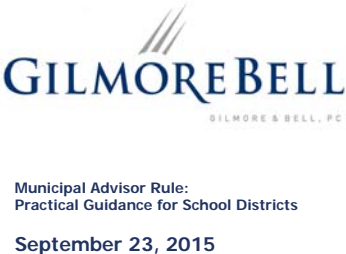
- § 79-10,105- All schools district may enter into lease or lease-purchase agreements
- **Buildings or equipment**
- May not exceed **7 yrs except energy financing contract may be 30 yrs**
- **Cases**



• Bonds:

- § 10-701 to § 10-719
- § 10-10,110 QCPUF (5 1/5 cents limit)
- **Public Facilities Construction and Finance Act §§ 72-2301 to 72-2308** Technology (\$100,000 limit)
- **Other**, eg., Interlocal Cooperation or Joint Public Agency Laws





GILMORE BELL
GILMORE & BELL, PC

Municipal Advisor Rule:
Practical Guidance for School Districts

September 23, 2015

Goals Today

Explain- Municipal Advisor Rules

Summarize- Application to District bond elections and financings

Guidance- Does a Financial Advisor may make sense?

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Bond Financings:
Parties

- **Issuer/Borrower** (School District)
 - Borrows money to finance a project or to refinance existing bonds
- **Underwriter**
 - Purchases the bonds from the District and resells them publicly

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Bond Financings:
Advisors

- To the **District** may include:
 - General Counsel
 - District’s Bond Counsel
 - Disclosure Counsel
 - Financial Advisor (a/k/a “Municipal Advisor,” “**MA**” or “**FA**”)
 - Other (election advisors, architects, accountants)

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Bond Financings:
Advisors

- To the **Underwriter** may include
 - Underwriter’s Counsel
 - Underwriter’s Bond Counsel

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What is the Municipal Advisor Rule?

SEC Rule- applies to all market participants, with important exceptions

Main Purpose- protect issuers from:

- undisclosed conflicts of interest
- inadequate qualifications
- advice provided not in an issuer’s best interest

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What is the Municipal Advisor Rule?

→ If a person or organization is a **“Municipal Advisor,”** that person or organization must *register as an MA* with the SEC and owes the District a *fiduciary duty*

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What is the Municipal Advisor Rule?

→ If a party owes a fiduciary duty, then that party must act in the *District's best interest* (legally impossible for underwriters)

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What is a Municipal Advisor?
(The technical definition)

A person who:

(i) provides

(a) *advice*;

(b) *to or on behalf of a municipal entity*;

(c) with respect to:

(1) municipal financial products; or

(2) *the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters*;

OR

(ii) undertakes a solicitation of a municipal entity on behalf of another unaffiliated organization with respect to the issuance of municipal securities or financial products.

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What is a Municipal Advisor?
In English...

A **Municipal Advisor** is a person who gives ***advice*** to a District with respect to the issuance of bonds, or other municipal securities including ***advice with respect to the structure, timing, terms and other similar matters.***

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Fiscal Agent?

- We have always called these folks by another name.
- What happened to the term “**fiscal agent**”?
- Can/should we be using that anymore?

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What is “Advice”?

- Advice is a recommendation or “call to action”
- Excludes providing general info. not involving a recommendation regarding municipal financial products or the issuance of municipal securities

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The following are generally not “Municipal Advisors:”

1. EEs, Bd members, other officials acting within their official capacity
2. Professionals (accountants, attorneys, engineers) if advice is limited to area of practice
3. Banks, when acting as lenders or providing advice on traditional banking products (deposit accounts)/trustees

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Underwriters

Underwriters are not “Municipal Advisors” so long as they only provide advice to an issuer for activities within the scope of an underwriting:

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Underwriters can advise on: (cont'd)

- Structure, timing, & terms of bond issue
- Ratings strategies and materials
- Assistance with preparation of POS/OS, negotiation of documentation
- Structuring an advance refunding escrow (but not advice with respect to escrow investments)

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Underwriters can advise on: (cont'd)

- Obtaining CUSIP #'s and DTC registration
- Preparation of post-sale reports
- Advice to make catch-up continuing disclosure filings (but does not include materiality assessments – a legal issue)

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Activities Outside the Underwriter exemption

- Advice on the adoption of a bond resolution or regarding a *bond election*
- Advice on investment strategies
- Advice on method of sale of securities (negotiated v. competitive bid)
- Advice re selection of transaction professionals such as counsel, consultants or advisors

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How is an MA/FA different from an Underwriter?

MA/FA

- Able to provide the District certain types of advice that an underwriter is legally prohibited from providing
- Must act in the District's best interest (fiduciary duty)
- Conflicts of interest are restricted
- Subject to SEC registration & oversight

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How is an MA/FA different from an Underwriter?

Underwriter

- Restricted in the types of advice it can provide to the District
- Must tell the District the underwriter is acting for its own account and in its own self-interest (G-17 letter)
- May have conflicts of interest that may be required to be disclosed

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Does My District Need an FA?

- The SEC, as evidenced by MCDC in 2014 and 2015, is using regs and enforcement mechanisms to push wedges between traditional underwriting/issuer relationships.
- **Nebraska Market**
 - Historically
 - Recent Shift and Impact of MA Rule

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Does My District Need an FA? (cont'd)

This is the District's decision – no external lawyer, underwriter, consultant or accountant should recommend that the District not hire an **FA**

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Does My District Need an FA? Factors to consider:

- Expense –Reduce v. Increase overall financing costs?
- Increased financing options – FA can recommend various courses underwriter is not permitted to recommend
- Time and effort in getting an FA up to speed on the District and its financings
- An FA must act in District's best interest

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Does My District Need an FA? Factors to consider:

- **GFOA*** *best practice* recommendation – “[U]nless the issuer has sufficient in-house expertise and access to market info[.], *it should hire an outside [MA]* prior to undertaking a negotiated debt financing in order to assist the government with evaluating proposals from underwriters, selecting the underwriter(s) for the transaction, and executing the bond sale.”

*Government Finance Officers Association (GFOA) @ <http://www.gfoa.org/selecting-and-managing-underwriters-negotiated-bond-sales>

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