

## A Debt Limitation Primer

### ***Funding: The Essence of Debt Limitation*** **By Diane Pedicord, OML General Counsel**

The Constitutional Debt Limitation at Article 10, Section 26 means that **a municipality must actually fund** all of its expenditures for a fiscal year out of the income and revenues of that fiscal year. *Meder v. City of Oklahoma City*, 1960 OK 87, 350 P.2d 916. **"Debt" is a failure to fund** a contract or claim at the time the municipality incurs the obligation by the use of revenues from the contemporaneous fiscal year. *City of Del City v. Fraternal Order of Police, Lodge No. 114*, 1993 OK 169, 869 P.2d 309.

1. If a municipality becomes obligated in any manner to pay out more money than the income it receives, it has incurred a debt. *Fraternal Order of Police, Lodge No. 164 v. City of Choctaw*, 1996 OK 78, 933 P.2d 261.
2. If a municipality becomes obligated in any manner to pay an amount in excess of the appropriation for that purpose, it has "become indebted." *Anadarko v. Fraternal Order of Police, Lodge 118*, 1997 OK 14, 934 P.2d 328.
3. If a municipality becomes obligated in any manner to pay a claim or contract from the revenues of a future fiscal year, it has "become indebted." *City of Tulsa v. Public Employees Relations Board*, 1990 OK 114, 845 P.2d 872.

**A debt is "funded" only if the budget contains an appropriation** for the purposes of the debt. *Wyatt-Doyle & Butler Engineering v. City of Eufaula*, 2000 OK 74, 13 P.3d 47. When all other city funds are ". . . merely unexpended balances that had been appropriated to various accounts and for other purposes . . .," an unfunded claim is invalid because of the "absence of funds" for that purpose. *Carmichael v. Board of County Commissioners of Woodward County*, 1970 OK 186, 475 P.2d 387. A claimant cannot cure a funding defect by raiding other appropriations made for other purposes. *First National Bank of Norman v. City of Norman*, 1938 OK 65, 75 P.2d 1109. It is the lack of specific funding for that purpose that creates the violation of Article 10, § 26.

**Because all claims must be paid out of the "income and revenue provided," "there can be no conception of what amount represents the income and revenue provided, except by reference to the appropriation. . . ."** *City of Sand Springs v. Kraus*, 1937 OK 517, 72 P.2d 726, 727. This maxim applies even where there may be a duty to see that a proper appropriation is made. *Jurd v. City of Tulsa*, 1938 OK 345, 80 P.2d 596.

### **Key Concepts.**

#### **Appropriation**

1. An appropriation is the specific budget item for the claim or contract. The budget is the method for providing for the expenditure of funds from whatever source that the municipality reasonably expects to collect. *Sinclair-Prairie Pipe Line Co. v. Excise Board of Seminole County*, 1935 OK 165, 42 P.2d 501.
2. FY 2004-2005 "debt" must be paid for by FY 2004-2005 funds. *Meder v. City of Oklahoma City*, 1960 OK 87, 350 P.2d 916.
3. To pay a contractual obligation there must be an appropriation for this purpose. *Anadarko Funeral Home v. Scarth*, 5 P.2d 747 (Okla. 1935).
4. "Debt" does not mean that the municipality does not have the money. Debt occurs when the obligation exceeds the appropriation provided by the governing body for the claim. *City of Tulsa v. Johnson*, 1943 OK 186, 145 P.2d 198.
5. "A debt payable in the future, is obviously no less a debt than if payable presently; and a debt payable upon a contingency, as upon the happening of some event, such as the rendering of service or delivery of property, etc., is some kind of a debt, and therefore within the prohibition." *O'Neil Engineering Company v. Incorporated Town of Ryan*, 1912 OK 398, 124 P. 19. See also, *Del City v. FOP*, 1993 OK 169, 869 P.2d 309.
6. Only the governing body is empowered to make the appropriation - the legislature or the courts cannot order the local elected officials to amend the budget. In other words, a claimant cannot cure a funding defect by raiding other appropriations for other purposes. *First National Bank of Norman v. City of Norman*, 1938 OK 65, 75 P.2d 1109.

7. The municipal governing body has no obligation to amend its budget to "legalize" an unfunded claim. *City of Anadarko v. FOP, supra*. Such a claim fails due to an "absence of funds." *Carmichael v. Board of County Commissioners of Woodward County, supra*.

8. If a creditor cannot prove that his claim was funded by revenues provided in an unexhausted appropriation, he has no remedy against the municipality. *Carmichael v. Board of County Commissioners of Woodward County, supra*. The only remedy of a person who furnishes goods or labor to a municipality in excess of estimated appropriation for the fiscal year is by action against the officers and by recovery of the goods. *J.B. Klein Iron & Foundry Co., v. Board of County Commissioners of Canadian County*, 1936 OK 675, 61 P.2d 1055. An impermissible debt cannot be held valid upon quantum meruit or equitable considerations. *Excise Board of Carter County v. Chicago, R.I. & P. Ry. Co.*, 1931 OK 583, 3 P.2d 1037.

## **June 30: A Drop Dead Date\***

1. On this date, the fiscal year ends and so does the power of the municipal governing body to appropriate funds or incur new obligations. *Zachary v. City of Wagoner*, 1930 OK 440, 292 P. 345. Even the people have no power to approve and fund a new debt for the prior fiscal year? such an election yields an unconstitutional result. *In re Town of Afton*, 1914 OK 537, 144 P. 184.

2. If there are unencumbered funds remaining at the end of the fiscal year, claimants have until September 30 to submit their claims for unpaid obligations incurred by a municipality on or before June 30. This 90-day window is for the sole purpose of actually paying an obligation that was validly appropriated during the fiscal year. It cannot constitutionally be used to make a new appropriation after June 30. See, 62 O.S. § 310.4.

3. After the end of the fiscal year, the only payments that a municipality can make from revenues of that fiscal year are those for which funds were encumbered for the purpose of the claim or those for claims validly presented for payment on or before September 30. See, 62 O.S. § 310.1 *et seq.*

4. Payment of an expense in the absence of an appropriation is subject to criminal penalties. See 62 O.S. §§ 478, 479. Additionally, any officer who causes the municipality to incur debt in excess of the appropriation available shall forfeit and be removed from office. 62 O.S. § 310.3.

*\*[Note: A few municipalities have changed their fiscal year from July 1 to either a calendar year or some other beginning date. Therefore, they will have to substitute the date ending their fiscal year for the June 30 date.]*

## **Judgments and the Sinking Fund**

1. The sinking fund is established by the Constitution for exclusive purposes, one of which is to pay judgments against municipalities. OK Const. Art. 10, § 28. It is not a substitute funding mechanism in lieu of an appropriation. *Federal Deposit Ins. Corporation v. Casady*, 106 F.2d 784 (10th Cir. 1939); *State v. Moreland*, 1931 OK 532, 3 P.2d 803.

2. Levies from a sinking fund require a showing that the judgment to be paid is a "proper judgment". *Southwestern Bell Tel. Co. v. Oklahoma County Excise Board*, 1980 OK 97, 618 P.2d 915.

3. To obtain a proper judgment against a municipality on a contract a claimant must present evidence to the court of a valid appropriation provided by the municipality to fund the contract. 62 O.S. § 362-363. *Valley Vista Development Corp., Inc. v. City of Broken Arrow*, 1988 OK 140, 766 P.2d 344.

4. The evidence must show an unencumbered balance of a specific appropriation at the time the contract was made. *Trudgeon v. Board of Commissioners of McClain County*, 1937 OK 299, 68 P.2d 82. The purpose of this requirement is to insure compliance with Article 10, § 26 of the Constitution. *Jacobson's Lifetime Buildings, Inc. v. City of Tulsa*, 1958 OK 285, 333 P.2d 307; *State v. Kimbrell*, 1931 OK 607, 5 P.2d 366.

5. Proof of an appropriation for a contract is a matter of subject matter jurisdiction that can be raised at any time during the litigation. *Baylis v. City of Tulsa*, 1989 OK 90, 780 P.2d 686; *Oklahoma City v. Green Const. Co.*, 1938 OK 510, 84 P.2d 623.

[Click here to go back to previous page](#)

Please Note: This summary is not a substitute for legal advice. You should consult your city or town attorney prior to taking any action based on this document.