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November 27, 2017

**To:** UCCI Membership

**Re:** *County Borrowing to Refund Bonds*

**Issue:**

May A County Take a Loan from a Bank for a Period of Time in Excess of Two Years in Order to Pay Off Outstanding Jail Bonds at a Lower Interest Rate?

**Analysis:**

Generally, home rule units may exercise powers and perform functions pertaining to its government and affairs without regard to specific statutory authority.<sup>1</sup> However, non-home-rule units possess only those powers which are specifically conveyed by the Illinois Constitution or by statute.<sup>2</sup>

Section 6-3004.1 of the Counties Code (the "Code") states that "[a]ny county having a population under 80,000 may, by resolution of its county board, incur an indebtedness for the construction of a county jail and sheriff's residence, and issue and sell its bonds and levy taxes upon all the taxable property of the county sufficient to pay the principal of the bonds at maturity and to pay interest on the bonds as it falls due, upon approval of the issuance of the bonds at a referendum held in accordance with the general election law."<sup>3</sup> Any such bonds "may be made registerable as to

<sup>1</sup> Ill. Const. 1970, art. VII, § 6(a).

<sup>2</sup> *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (1997).

<sup>3</sup> 55 ILCS 5/6-3004.1; see 55 ILCS 5/6-3001 ("Any county having a population of 80,000 or more inhabitants, but less than 500,000 inhabitants may by resolution of its county board incur an indebtedness for the construction of a county jail \*\*\* and may issue and sell its bonds and levy taxes upon all the taxable property of such county sufficient to pay the principal thereof at maturity and to pay interest thereon as it falls due."); see also 55 ILCS 5/6-3005 (counties with a population of 500,000 or more but less than 1,000,000, the county board may likewise incur indebtedness for the construction or remodeling of a county jail).

principal and may be made callable on any interest payment date at par and accrued interest after notice has been given at the time and in the manner provided in the resolution.”<sup>4</sup> The instant issue involves the refunding<sup>5</sup> of those bonds.

Section 6-0001 of the Code, entitled “Refunding bonds,” provides that a county board “may authorize by ordinance the issuance of refunding bonds (1) to refund its bonds prior to their maturity; (2) to refund its unpaid matured bonds; (3) to refund matured coupons evidencing interest upon its unpaid bonds; (4) to refund interest at the coupon rate upon its unpaid matured bonds that has accrued since the maturity of those bonds; and (5) to refund its bonds which by their terms are subject to redemption before maturity.”<sup>6</sup> The question here is whether a county may borrow money from a bank for longer than a two-year term in order to refund the bonds rather than issuing such refunding bonds for the same purposes.

Section 5-1135 of the Code, entitled, “Borrowing from financial institutions,” specifically states that “[t]he board of a county may borrow money for any corporate purpose from any bank or other financial institution provided such money shall be repaid within 2 years from the time the money is borrowed.”<sup>7</sup> Thus, under the plain language of the statute, it would appear that a county is explicitly constrained to a two-year borrowing term.

You have also asked whether that two-year period could be extended under the Local Government Debt Reform Act (the “Act”).<sup>8</sup> Pursuant to Section 11 of the Act, “[b]onds may be refunded \*\*\* upon such terms as the governing body may set in accordance with this Act.”<sup>9</sup> According

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<sup>4</sup> 55 ILCS 5/6-3009.

<sup>5</sup> “Refunding” is generally known as “[a] procedure whereby an issuer refinances outstanding bonds by issuing new bonds.” Municipal Securities Rulemaking Board at <http://www.msrb.org/Glossary/Definition/REFUNDING.aspx> (last accessed November 27, 2017).

<sup>6</sup> 55 ILCS 5/6-10001.

<sup>7</sup> 55 ILCS 5/5-1135.

<sup>8</sup> 350 ILCS/1 *et seq.*

<sup>9</sup> 30 ILCS 350/11.

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to the Act, “[re]venue bonds may be issued to refund general obligation bonds or alternate bonds issued under this Act.”<sup>10</sup> However, “[g]eneral obligation bonds shall not be issued to refund revenue bonds or alternate bonds.”<sup>11</sup> Again, the question comes back to the revenue source for refunding of the newly issued bonds. Reading Section 11 of the Act and Section 5-1135 of the Code together shows that bonds may be refunded subject to the Act and if they are funded by a bank loan, that loan cannot be for longer than a two-year term.<sup>12</sup>

Section 17(b) of the Act grants governing bodies the authority to enter into installment contracts for the purchase or lease of either real or personal property through agreements that provide for payment over a period not to exceed 20 years.<sup>13</sup> Such property includes investments, investment agreements, and investment services and contemplates investments purchased in connection with a bond issue.<sup>14</sup> Section 3 of the Act defines the term “Bond” to mean “any instrument evidencing the obligation to pay money authorized or issued by or on behalf of a governmental unit under applicable law, including without limitation, bonds, notes, installment or financing contracts, leases, certificates, tax anticipation warrants or notes, vouchers, and any other evidences of indebtedness.”<sup>15</sup> The plain language of Section 17(b) would seem to imply that a county could enter into an installment contract to make payments toward the lease or purchase of such property over a period of not more than 20 years. In that sense, Sections 3 and 17 together suggest that a county could enter into an obligation

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<sup>10</sup> 30 ILCS 350/11.

<sup>11</sup> 30 ILCS 350/11 (“except as expressly permitted by applicable law”).

<sup>12</sup> 30 ILCS 350/11; 55 ILCS 5/5-1135.

<sup>13</sup> 30 ILCS 350/17(b) (“[t]he governing body of each governmental unit may purchase or lease either real or personal property, including investments, investment agreements, or investment services, through agreements that provide that the consideration for the purchase or lease may be paid through installments made at stated intervals for a period of no more than 20 years or another period of time authorized by law, whichever is greater; provided, however, that investments, investment agreements, or investment services purchased in connection with a bond issue may be paid through installments made at stated intervals for a period of time not in excess of the maximum term of such bond issue.”).

<sup>14</sup> 30 ILCS 350/17(b).

<sup>15</sup> 30 ILCS 350/3(d).

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to take on indebtedness for up to 20 years in making payments toward bonds. However, reading Sections 3 and 17 of the Act in concert with Section 5-1135 of the Code indicates that a county could not borrow the money to make payments towards that indebtedness from a bank under terms that would exceed 2 years. In other words, the funding source must come from somewhere other than a long-term bank loan.

Section 6-10004 of the Code, which addresses the form of refunding bonds, lends support for this conclusion.<sup>16</sup> Pursuant to Section 6-10004, a county may authorize by ordinance the issuance of refunding bonds for the purpose of refunding bonds prior to maturity.<sup>17</sup> Such an ordinance should provide for, among other things, the levy and collection of a direct annual tax sufficient to pay principal and interest on the bonds.<sup>18</sup> While the Code does not specifically prohibit borrowing such principle and interest in the form of a bank loan, the Code also does not explicitly provide for such a structuring. We note that whatever the funding mechanism used to obtain the refunding bonds, the Code states that such refunding bonds may be exchanged for the bonds to be refunded on a dollar for dollar basis and the refunding bonds may not be sold at less than par value and accrued interest with payment used to pay the bonds.<sup>19</sup>

Finally, prudence would dictate that a county inclined to borrow money from a bank to finance refunding bonds would have to consider the county's overall debt limitations before doing so.<sup>20</sup> Indeed, the total amount of such bonds, together with existing indebtedness, may not exceed the

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<sup>16</sup> 55 ILCS 5/6-10004.

<sup>17</sup> 55 ILCS 5/6-10004.

<sup>18</sup> 55 ILCS 5/6-10004.

<sup>19</sup> 55 ILCS 5/6-10003.

<sup>20</sup> 55 ILCS 5/5-1135 (The indebtedness incurred under Section 5-1135, when aggregated with the existing indebtedness of the county, may not exceed any debt limitation otherwise provided for by law).

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limitation provided by law for indebtedness of the county.<sup>21</sup> However, it is worth noting that interest on bonds is generally not included when computing county indebtedness for purposes of calculating a particular county's overall debt limitation.<sup>22</sup>

**Conclusion:**

In sum, it is the opinion of this office that a county endeavoring to refund bonds using a loan from a bank or other financial institution to do so is limited by Section 5-1135 of the Code to a two-year loan term.<sup>23</sup> Further, any such restructuring of bond debt should first include a consideration of the county's overall debt limits.

At the request and direction of UCCI this opinion was prepared by  
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<sup>21</sup> 55 ILCS 5/6-3004.1 (regarding counties having a population of less than 80,000); 55 ILCS 5/6-3001 (pertaining to counties with a population of between 80,000 and 500,00); 55 ILCS 5/6-3005 (counties with a population of 500,000 or more but less than 1,000,000).

<sup>22</sup> 30 ILCS 350/17(a).

<sup>23</sup> 55 ILCS 5/5-1135.

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