



## ***CHECK WITH BECK***

**NOTE:** Larry Beck is a lawyer with Beck Law Offices in Hayden, Idaho. He represents and gives advice to several fire districts and city fire departments throughout all of Idaho. He also practices in the areas of employment and labor law, general litigation and personal injury law. He has agreed to write a legal column for ISFCA, however, information provided in this column is only meant to be a general survey of the law and should not be relied on to aid in specific legal disputes without further legal consultation. Larry can be reached at 1-888-241-4400.

### **WHY HAS IT BECOME DIFFICULT TO OBTAIN FINANCING FOR STATIONS AND EQUIPMENT?**

Suppose you are a board of commissioners for a fiscally responsible fire district and you want to finance the construction of a new station or purchase an apparatus. The cost is in the range of six to seven figures. You do not want to purchase with bonds as allowed under the fire protection laws, as you do not want to increase the tax burden of your residents or wait to have an election. Instead, you want to lease purchase the station or equipment over a term of 1—15 years, so that instead of incurring long term debt, the lease payments can be made on an annual basis out of your annual budget appropriations. Lenders are coming out of the woodwork to offer you terrific lease terms. Then, you start to talk specifics and the lenders speak with their lawyers (bond counsel) about the transaction and learn that there is a recent Idaho Supreme Court decision that most folks agree has made the process difficult, if not impossible, to do without having an election. Now what?

First, it is true that the Idaho Constitution prohibits a governmental entity from going into long term debt without first obtaining voter approval. It is also true that the Idaho Supreme Court has determined that some lease purchase agreements that governmental entities have entered into to finance new construction have violated the constitutional prohibition against incurring debt. However there are two exceptions to the constitutional prohibition that I believe are available to allow governmental entities to lease purchase new construction and equipment without having an election.

The first method is a true exception to the constitutional prohibition. If the reason for incurring debt that generally requires voter approval, is to pay for an “ordinary and necessary” expense, the debt may be incurred without voter approval. However, the Idaho Supreme Court has narrowly construed what qualifies as an ordinary and necessary expense. In the latest decision that is often referred to by lenders and their bond counsel, *City of Boise V. Frazier*, the Court reaffirmed that the exception can only be utilized by an entity if there is a *necessity* for making the expense during the current fiscal year. The need for the expense must be of an *urgent* nature. The need must really be one that can’t wait to be met until after an election can be held. Any thing less requires an election, period! This strict interpretation is what has caused lenders and their bond counsel to put a chilling effect on governmental lending that has not been first approved at an election.

The second method is not really an exception to the constitutional prohibition, but is more of an exclusion. The constitutional debt limitation only applies to situations where the governmental entity is going to incur debt that exceeds its annual appropriations for any one year. So, if a governmental entity enters into a long term lease purchase agreement that calls for a series of annual lease renewals, the transaction should fall outside the reach of the constitutional

prohibition. The entity would merely make an annual lease payment from its current year's budget appropriation, and then renew the lease for the next year. At the end of several years, the lease will be paid off and the entity will exercise its option to purchase the building or equipment for a nominal sum. There are several technical requirements for drafting such a lease to best insure it meets constitutional muster, but it can be done. To date, we still do not have an Idaho Supreme Court decision that has fully analyzed such a transaction to determine whether it will receive the "Supreme" stamp of approval. However, several district courts in Idaho have approved these types of transactions.

My office has been successful in receiving district court and lender approval of these types of transactions under both the exception and exclusion methods. However, until we have an Idaho Supreme Court decision that clarifies the legality of these transactions once and for all, a fire district would be smart to seek a judicial confirmation of the transaction from a local district court. This can be expensive and take additional time, but it is the best method to help guarantee that the financial transaction will not be voided later due to a claim by a taxpayer or group that the transaction violates the constitution. **ON WE GO!**