

File No. 1290

HIGHWAY LAW, SECTIONS 193, 284, 285-a; PUBLIC WORKS LAW, SECTION 15.  
Town superintendent not required to advertise for bids for purposes of purchasing road surfacing materials where such surfacing will be done by the town superintendent.

## INQUIRY

Must a town superintendent of highways advertise for bids for the purpose of purchasing asphaltic, bituminous or tar base road surfacing materials where the work of applying such materials will be performed by the superintendent of highways and his employees?

## STATEMENT OF LAW

This Department knows of no provision of law which requires that the purchase of road surfacing materials be subject to advertisement for bids.

A town board may advertise for bids for the construction of new highways or the permanent improvement of existing highways, where it has determined that such construction or improvement shall be done under contract pursuant to section 193 of the Highway Law.

Further, towns of the first class may advertise for bids for the furnishing, supplying, hauling, conditioning, delivery, heating and applying of such materials, and for the purchase of trucks, machinery or equipment, pursuant to section 285-a of the Highway Law.

It is our opinion that advertisement for bids is not required when the work is not to be performed under contract. Section 15 of the Public Works Law is not applicable. The superintendent of highways may make the purchase if such materials are specified in the contract made between the town superintendent and the town board pursuant to section 284 of the Town Law, or if such materials are necessary to accomplish the purposes specified in the contract. He may not purchase materials which are not authorized by the terms and provisions of said contract. (*Cartiste v. Burke*, 1913, 82 Misc. 262; 1911 Op. Atty. Gen. 325).

## CONCLUSION

A town superintendent of highways is not required to advertise for bids for the purpose of purchasing asphaltic, bituminous or tar base road surfacing materials where the work of surfacing highways will be performed by the superintendent of highways and his employees.

May 6, 1946.

File No. 1293

TOWN LAW, SECTION 200; HIGHWAY LAW, SECTION 172.

Procedure for laying out highways improved pursuant to section 200 of the Town Law.

You inquire whether it would be possible for the town superintendent of highways to take over streets improved pursuant to section 200 of the Town Law.

Under section 202 of the Town Law, the expense of such improvements is a charge upon the benefited property and under section 202-a, the expense of maintenance is likewise a charge upon the benefited property. We know of no way in which the town could take over the maintenance of such streets, after improvement, unless they became a part of the town highway system.

Article 8 of the Highway Law provides a procedure whereby new town highways may be laid out. We call your attention to the provisions of this article, particularly section 180.

May 6, 1946.

File No. 1294

TOWN LAW, SECTION 200; HIGHWAY LAW, SECTION 140.

Town superintendent may not maintain streets in subdivisions not a part of town highway system.

You complain of the lack of proper maintenance of streets in subdivisions in an unincorporated community.

The town superintendent of highways has no authority to maintain streets which are not part of the town highway system. Under section 200 of the Town Law, proceedings may be instituted by the owners of land on streets in such subdivisions, but at the expense of the owners of lands on such streets.

Under Article 8 of the Highway Law, there is a procedure whereby persons assessable for highway taxes may make application to the town superintendent to lay out new highways. Should such proceedings be taken in your town, and if the streets were taken over by the town as a part of its highway system, then the maintenance would be at town expense.

May 6, 1946.

File No. 1291

LOCAL FINANCE LAW, SECTION 35.00; TOWN LAW, SECTION 230.

No referendum required when town hall is to be financed in part by serial bonds maturing not over 5 years after issuance.

LOCAL FINANCE LAW, SECTION 35.00; HIGHWAY LAW, SECTION 142.

Referendum required to increase limitation of section 142 of Highway Law re town garage.

LOCAL FINANCE LAW, SECTION 107.00 (b).

Surplus town funds may be used to provide a down payment upon a town hall or town garage to be financed by bond issue.

## INQUIRY

(1) Is a referendum required under section 220 of the Town Law, or under the Local Finance Law, to build a town hall

which is to be financed in part by serial bonds maturing not over five years after issuance?

- (2) Is a referendum required under section 142 of the Highway Law, or under the Local Finance Law, to construct a town garage in a town of the second-class, which will cost over \$6,000 and is to be financed in part by serial bonds maturing not over five years after issuance?
- (3) May surplus town funds be used to provide the down payment required by section 107.00 of the Local Finance Law for a town hall or a town garage which is to be financed by the issuance of serial bonds?

#### STATEMENT OF LAW

##### Inquiry (1)

Section 81 of the Town Law provides in part:

"The town board may upon its own motion and shall upon a petition, as hereinafter provided, cause to be submitted at a special or biennial town election, a proposition:

- i. In any town:
- \* \* \* \* \*
- (c) To purchase, lease, construct, alter or remodel a town hall \* \* \* ; acquire necessary lands therefor, and equip and furnish buildings for such purposes, \* \* \* ."

The last paragraph of section 81 provides, however, as follows:

"Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section."

Section 220 of the Town Law provides in part:

"Upon the adoption of a resolution therefor, subject to a permissive referendum, in a town of the first class, or, upon the adoption of a proposition therefor, at a town election, in a town of the second class, the town board may:

- \* \* \* \* \*
3. Purchase, lease, construct, alter or remodel a town hall, a town lockup or any other necessary building for town purposes, acquire necessary lands therefor, and equip and furnish such buildings for such purposes, or to demolish or remove any town building."

The last paragraph of section 220 provides, however, as follows:

"Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such

expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section."

Section 35.00 of the Local Finance Law provides, in effect, that in a town of the second-class there is no referendum upon a bond resolution authorizing the issuance of bonds with a proposed maturity of not more than five years. To this there is an exception stated in paragraph a of section 35.00 which is not applicable in this problem.

Paragraph c of section 35.00 of the Local Finance Law specifically provides:

"c. The expenditure of money for which it is proposed to issue obligations shall not be subject to a permissive or mandatory referendum in any town."

Section 176.00 of the Local Finance Law provides:

"§ 176.00 Local finance law to be the exclusive law Except as otherwise provided in this article, all statutes, local laws, ordinances, rules and regulations, insofar as they relate to the matters herein contained, are hereby superseded, it being the legislative intent that this chapter shall constitute the exclusive law on such matters."

We believe that the new paragraphs added to sections 81 and 220 of the Town Law now require a referendum only when the expenditure is to be paid from current taxes. Under section 35.00 of the Local Finance Law, it is clear that the taxpayers never vote upon the expenditure of money for an object or purpose which is to be financed by a bond issue. In the cases in which section 35.00 of the Local Finance Law does require a referendum, it is only upon the bond resolution.

It is our opinion that no referendum is required under the Town Law or the Local Finance Law in the case stated in Inquiry (1).

##### Inquiry (2)

Section 142 of the Highway Law now provides in part:

"\* \* \* The town superintendent shall provide a suitable place for housing and storing all machinery, tools, implements and equipment owned by the town and cause the same to be stored therein, when not in use. Notwithstanding the provisions of article fourteen of the town law, the town board of any town may authorize the town superintendent to purchase real estate in the name of the town and erect thereon a building for the purpose of housing and storing such machinery and equipment, or erect a building for such purposes on real estate owned by the town, but the total cost thereof

shall not exceed six thousand dollars in towns having an assessed valuation of not less than eight million dollars, and shall not exceed fifty thousand dollars in towns in a county containing not more than three towns, and in other towns such total cost shall not exceed three thousand dollars without the vote of a town election. \* \* \*

The town of Queensbury, according to its 1945 Annual Report of the Supervisor, has an assessed valuation of over eight million dollars. It may spend for a town garage up to the sum of \$6,000, but in order to spend over that amount a vote of a town election would be required for such purpose. The words "without a vote of a town election" obviously apply to all three limitations in the above quoted portion of section 142. This election is required even if bonds are issued, since section 10.00 of the Local Finance Law provides, in effect, that bonds may not be issued for an object or purpose to a greater extent than the town is authorized by law to spend money for the object or purpose. In order to increase the spending limitation the election is required.

It is our opinion that a referendum would be required under section 142 of the Highway Law to authorize the spending of over \$6,000 for a town garage in the town of Queensbury. No referendum would be required under section 35.00 of the Local Finance Law as the bond issue would be for not over five years and is not for a town highway improvement within the meaning of paragraph a of section 35.00.

#### Inquiry (3)

Under section 107.00 (paragraph b) of the Local Finance Law, the town would be required to provide a down payment from current funds of at least 5% of the cost of either the town hall or the town garage if bonds were issued. The term "current funds" is defined in paragraph a of section 107.00 of the Local Finance Law as including certain items. Subdivision 3, as amended by chapter 806 of the Laws of 1946, provides that the term "current funds" shall include:

"3. Revenues other than real estate taxes or assessments, which have been collected or received during a fiscal year in excess of the total amount of such revenues as estimated for such fiscal year, and surplus funds or unexpended balances, which are available to be applied toward the payment of the cost of capital improvements or equipment."

In the case of the construction of a town garage under section 142 of the Highway Law, there is a question as to whether the down payment should be provided from highway funds in towns having "pension exempt" property upon its assessment rolls. Language which was formerly in section 142 of the Highway Law has been almost universally construed by the towns in this State as authorizing the expenditure of general town moneys

(as distinguished from town highway moneys) for such garage. By recent amendments to section 142, the expression "town moneys" has been deleted.

We cannot find in any other section of law any language which would indicate an intention of changing the practice of many years of paying for town highway garages, or the bonds therefor, from general town funds.

We are of the opinion that surplus town funds may be used to provide a down payment for a town hall or a town highway garage when bonds are to be issued to finance such structures.

#### CONCLUSION

- (1) A referendum is not required under section 220 of the Town Law, or under the Local Finance Law, in order to build a town hall which is to be financed in part by serial bonds maturing not over five years after issuance.
- (2) A referendum would be required under section 142 of the Highway Law to authorize the spending of over \$6,000 for a town highway garage even if financed by serial bonds maturing not over five years after issuance.
- (3) Surplus town funds may be used to provide a down payment upon a town hall or town garage which is to be financed by the issuance of serial bonds.

May 7, 1946.

File No. 1295

#### GENERAL MUNICIPAL LAW, SECTION 352.

Municipality may not extend credit to vendees of its property and services at municipal airports.

#### INQUIRY

May a municipality which operates a municipal airport under Article 14 of the General Municipal Law sell aviation petroleum products to individuals or private corporations upon a monthly credit basis?

#### STATEMENT OF LAW

It is not necessary to make any determination as to whether such a transaction violates the provisions of section 1 of Article VIII of the Constitution. This is so for the reason that Article 14 of the General Municipal Law does not authorize a municipality operating an airport to extend credit to a vendee of its property or services. A municipal corporation possesses only such powers as are expressly conferred upon it by statute, or necessarily implied. (See *Wells v. Town of Salama*, 119 N. Y. 280, 287.) There is no "necessary" implication of a power to extend such credit contained in Article 14.