



Washington State Senate

Senator Ann Rivers
18th Legislative District

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Bob Ferguson
Attorney General
State of Washington
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Re: Attorney General Opinion Request

Dear Attorney General:

I would appreciate your opinion on the matter of statutory interpretation.

RCW 70.119A.170 authorizes the Drinking Water Assistance Account to provide financial assistance to public water systems. RCW 39.69.020 allows for loan agreements from an agency of the state of Washington requiring the municipal corporation to repay the loan under the terms and conditions set forth in the loan agreement. WAC 246-296-150(10)(b) identifies what is required of the Department of Health in the event of loan agreement termination. The boilerplate loan contract clarifies the repayment of loan proceeds which is considered by the City of Camas bond counsel as "acceleration of repayment clause" in section 1.25 of the Drinking Water State Revolving Fund (DWSRF) loan contract. **Our question is whether the "acceleration of repayment clause" is permitted given the acceleration of payments by this junior debt (DWSRF loan) could jeopardize repayment for senior debt?**

The form of loan agreement for DWSRF loans contains a provision that if the municipality defaults (misses a payment or violates another covenant), the State may accelerate and all future payments and those payments will be all due immediately. The City, like most cities, has long term bonds outstanding. As indicated in the DWSRF loan agreement, those bonds and future debt of the City have a lien on revenue of the City's water utility senior to the lien of the SRF loan. The City's bonds are not subject to acceleration upon an event of default. If junior debt is subject to acceleration it effectively gives the junior debt a super claim on money in the event of default.

Many bond ordinances explicitly provide that no junior lien debt may be subject to acceleration. In addition, acceleration is a very severe remedy and in many cases would mean that a municipality could not raise rates enough to pay the accelerated payments. Having junior lien debt with an acceleration provision (1) is an issue for rating agencies and investors, (2) is a disclosure issue, (3) may be prohibited

by bond ordinances, (4) impacts the legal opinion that can be delivered and (5) may violate policy and could lead to insolvency. The Public Works Assistance Account loan documents removed acceleration as a remedy over 20 years ago. The Dept. of Ecology loan agreement does include acceleration as a remedy, but DOE provided the letter attached that indicates that as long as the municipality has senior debt outstanding, DOE will not exercise the right to accelerate the loan.

I would appreciate the Attorney General's opinion on the matter of DWSRF loans should have the clause for accelerating payments when Senior Lien Obligations exist for the borrower. Does the Attorney General agree that WAC 246-296-150(10)(b) should not apply to municipal corporations with Senior Lien Obligations?

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ann Rivers". The signature is written in black ink and is positioned above the typed name.

Senator Ann Rivers
Washington's 18th District