Municipal Current Expenses and the Debt Limit

Herbert C. Hirschboeck

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/mulr/vol19/iss2/1

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
ON November 3, 1874 the people of Wisconsin wrote into their constitution:

"No county, city, town, village, school district, or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to any amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness."\(^1\)

The economic aftermath of the Civil War was the occasion for that amendment. As history repeats itself, so has the depression of 1928-1935, consequent upon the World War, focused attention of taxpayers on the enormous expenditures of local governments. In excess of twenty-five cents of every tax dollar levied in Milwaukee is paid out as principal and interest on indebtedness incurred by the city in more prosperous days. Property owners, leagued together to seek relief from a tax burden which the times make it too difficult for them to bear, are confronted by the stern fact that this tax for interest and principal cannot be reduced.

The unprecedented unemployment and demands of willing men for work indicate that public works should be more extensively undertaken than before. The mounting tax delinquencies make it practically impossible to pay for such works during construction. Further bond issues

\(^1\) Wis. Const. art. XI, § 3.
are advocated and advantage is taken of the more recent amendment to Article XI Section 3 of the Wisconsin Constitution, excepting from indebtedness therein limited, so-called revenue bonds for the payment of which only the revenues of income producing public works are pledged.

But this article is not concerned with these applications of the debt limit amendment, but rather with the interpretation of the constitutional limitation in relation to the incurring of obligations for current expenses for the ordinary operation of the municipalities, and the funding of such liabilities:

Bank loans, scrip, notes, baby bonds and other means have been resorted to by municipal officers to fill the gap between the imperative need for funds and the lagging collection of taxes. If a city has bonds outstanding equal to its debt limit, no cash in its treasury, and its taxes long delinquent, are its contracts for the hire of policemen and the purchasing of municipal supplies constitutional? If it issues city orders on its payroll and to those who furnish supplies, are they valid? May it consolidate these numerous obligations in a single enforceable note to a bank which will advance the funds to discharge them?

The efficacy of the amendment of 1874 and its interpretation and application to the present extension of municipal credit for current expenses are problems which the Wisconsin Supreme Court has not yet in this depression been called upon to consider. Other courts, however, have had to deal with such problems.²

That the debt limit provision of the Wisconsin Constitution needs authoritative judicial interpretation in its application to present day methods of municipal financing was evidenced by the diversity of legal opinion current in the city of Milwaukee when the validity of $2,000,000 in bank loans to the city was questioned in the case of Reuther v. City of Milwaukee,³ in the circuit court for Milwaukee County and

²Recent cases holding that current expense obligations are excepted from such constitutional limitations are: Smith v. Town of Guin, (Ala. 1934) 155 So. 865; Jones v. Brightwood Independent School District No. 1, 63 N.D. 275, 247 N.W. 884 (1932); Scranton Electric Co. v. Borough of Old Forge, 309 Pa. 73, 163 Atl. 154 (1932); Bosak State Bank v. Borough of Old Forge, 309 Pa. 79, 163 Atl. 155 (1932). Recently in Montana it was held that current expenses were indebtedness limited by such a provision. Farbo v. School Dist. No. 1 of Toole County, 95 Mont. 531, 28 P. (2d) 455 (1933); Commonwealth Public Service Co. of Montana v. City of Deer Lodge, 96 Mont. 15, 28 P. (2d) 472 (1934).

³In Reuther v. City of Milwaukee (Circuit Court for Milwaukee County, February, 1933) the court by Hon. August Braun, circuit judge, dismissed the plaintiff taxpayer's suit for an injunction to restrain the repayment of loans made for the funding of the city's current expenses at a time when the shrinking assessed valuation of the city had reduced the debt limit below the total outstanding bonds of the city. The court held that this funding of current expense liabilities was not the incurring of "indebtedness" limited by the constitution. No appeal was taken from the judgment of the circuit court.
when that city began to issue its first series of tax redemption notes, popularly known as baby bonds.

Whether or not municipal current expense credit obligations constitute indebtedness within the meaning of the constitutional limitation would seem at first glance to admit of little doubt. No city may become indebted in any manner for any purpose in excess of the five percent limit, and yet many cities have contracted such liabilities far in excess of the limitation without question of their validity.

The word "indebtedness" is a word that should have a settled meaning. Prior to 1874 the Wisconsin Supreme Court had said that it was proper to send a man to jail as a perjuror for deposing in an attachment affidavit that the defendant was "indebted" when the obligation sued on was not yet due. Cities have vast amounts of municipal bonds outstanding. They are all payable at a future date. Application of the Supreme Court's definition of "indebtedness" in attachment cases to the use of that word in the debt limit provision would mean that the entire bonded debt of the municipality was not to be counted in determining whether the limit was being exceeded. This absurd result is the direct opposite to the view held by the general public which refers to the constitutional limitation as the "bonded debt limit." Of course it is neither the law dictionary nor the popular misconception of the matter which can form the basis of correct interpretation.

The Wisconsin debt limit provision was copied from that of Iowa. In 1873, just a year before the adoption of the Wisconsin amendment, the Iowa Supreme Court had interpreted the word "indebtedness." Among other things it said that "where the contract made by the municipal corporation pertains to its ordinary expenses, and is, together with other like expenses, within the limit of its current revenues and such special taxes as it may legally and in good faith intend to levy therefor, such contract does not constitute the incurring of indebtedness within the meaning of the constitutional provisions."

When Wisconsin adopted the Iowa debt limit it thereby took along with it the Iowa judicial construction of it. It is a recognized rule of construction that when a state adopts a provision from the constitution

---

4 City of Milwaukee Tax Redemption Notes, Series A, were authorized in the amount of $5,000,000, and the earliest of them were dated June 1, 1933. They were to be issued only in payment of current expense obligations of the city and city-owned tax sale certificates representing delinquent city taxes in amount equal to the notes issued were segregated as a special fund for the payment of them. The notes were coupon bearer notes payable at the expiration of four years unless earlier redeemed. The interest rate was 5 per cent per annum and interest was payable annually on surrender of coupons. The ordinances and resolutions providing for these notes were adopted under authority of § 67.12 (9) of the Wisconsin Statutes of 1933.

5 Trowbridge v. Sickler, 42 Wis. 417 (1877); Slutts v. Chafee, 48 Wis. 617, 4 N.W. 763 (1879).

6 Grant v. Davenport, 36 Iowa 396 (1873).
or laws of another state, it thereby adopts the judicial construction thereof by the state of its origin. 7

Lest it should be thought that such a rule of construction is too artificial, resort to contemporary legislation reveals the legislature's understanding of the amendment which it submitted to the people. The same legislature on March 10, 1874, enacted a revision of the city charter of Milwaukee. Section 6 of Chapter XI of that Charter contained a statutory debt limitation in which the exceptions recognized by the Iowa court were expressed. 8 Orders drawn upon the treasurer payable from current revenues and the borrowing of money in anticipation of such revenues were not to be treated as indebtedness. 9

In 1896, the Iowa interpretation was definitely accepted by the Wisconsin Supreme Court in Earles v. Wells, 10 where the exceptions from "indebtedness" were referred to as "cash basis" transactions. In the words of the opinion, "so long as the current expenses of the municipality are kept within the limits of the moneys and assets actually in the treasury and the current revenues collected or in process of immediate collection, the municipality may be fairly regarded as doing business on a cash basis, and not upon credit, even though there may be for a short time some unpaid liabilities." 11

There is thus recognized a sphere of business activity of municipalities which is outside the scope of the debt limit. Liabilities incurred within this sphere though they remain unpaid for a short time are not "indebtedness" as that word is used in the constitution and yet they are

7 John Farwell Co. v. Wolf, 96 Wis. 10, 70 N.W. 289 (1897); Milwaukee County v. City of Sheboygan, 94 Wis. 58, 68 N.W. 387 (1896); In re Bullen's Estate, 143 Wis. 512, 128 N.W. 109 (1910); Wis. Anno. (1930), note to Wis. Const. art. XI, § 3, at p. 110.
8 Milwaukee City Charter, § 6, c. XI (Rev. 1874) (Wis. Laws 1874, c. 184), contained the following: "provided that the foregoing limitation shall not apply to or include orders drawn upon the city treasurer payable out of the revenues of the current year" . . . "and provided, further, that the common council may as provided in chapter seventeen of this act, borrow money to be repaid out of the revenues of the current year."
9 The desire of the court to harmonize its and the legislature's construction of the debt limit provision of the constitution is shown in School Dist. No. 4, Village of Shorewood v. First Wisconsin Company, 187 Wis. 150, 203 N.W. 939 (1925), in which § 67.01 (4) of the Statutes defining the assessment to be used in determining the five per cent limit, was construed.
10 94 Wis. 285, 289; 68 N.W. 965 (1896).
11 94 Wis. 285, 289, 68 N.W. 965 (1896). The court explains further: " ** * in other words, a municipality's capacity for doing business on such cash basis, with outstanding liabilities, is necessarily measured by the amount of cash on hand and the available assets and resources convertible into cash to meet the payment of such liabilities as they become due. But the moment an indebtedness is voluntarily created 'in any manner or for any purpose,' with no money or assets in the treasury, or current revenues collected or in process of collection for the payment of the same, that moment such debt must be considered in determining whether such municipality has or has not exceeded the constitutional limit of indebtedness."
recognized as liabilities. If such liabilities can be validly contracted they must remain subsisting liabilities until they are paid. If the process of collecting the taxes upon which they were predicated is prolonged because of general economic conditions they will remain unpaid for a longer time but their enforcibility against the municipality cannot be impaired. If a number of such liabilities are consolidated into one note to a bank or into a series of notes issued to the public there is no increase of liability. No constitutionally limited indebtedness comes into being by this refunding operation.

The reason for this excluded sphere of municipal transactions becomes apparent when the purpose of the constitutional provision is examined. It was adopted to stem the tendency of municipal officers to obtain present enjoyment of public works but to load the cost thereof not upon those who were taxed during the terms of such officers, but upon taxpayers of the next and succeeding years. A pay-as-you-go policy was adopted with a definite restriction on projecting tax burdens into the future. Such obligations for which the officers had accumulated resources or for which they provided revenues within the year, projected no burden on the taxpayers of the next and future years. No limit was established by the constitution on such current engagements. The limitation of municipal tax levies in any year for such purposes was left to the legislature as well as to the popular reaction against elected officers who would be guilty of incurring excessive current liabilities accompanied by excessive current tax levies.

This exclusion of current operations from the debt limit is recognized from the constitutional provision itself. After limiting "indebtedness" to five per cent of the assessed value of the property in the municipality, the constitution requires the municipality "incurring any indebtedness as aforesaid," at or before the time of incurring it, to "provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same."12

Certainly the kind of indebtedness for which all these provisions are made in this mandatory future tax levy clause is the same kind of indebtedness spoken of in the limitation clause, but a municipal liability for which resources or revenues are already provided or intended to be provided within the year is not capable of disposition under the mandatory future tax levy clause.

If the mandatory future tax levy clause is not applicable to a municipal engagement then it is not "such" a debt or "indebtedness as aforesaid" within the meaning of the limitation clause. Only obligations

12 Wis. Const. art. XI, § 3.
which are to be provided for by future annual tax levies are "indebtedness" which it was intended to limit.

The case of Herman v. City of Oconto\(^\text{13}\) went so far as to hold that a sewer contract which was to be provided for by a tax levy within the year, was not subject to the mandatory future tax levy clause,\(^\text{14}\) but it was unnecessary for the court to decide whether it was an indebtedness under the limitation clause. The court made a statement of liability and indebtedness of the city including the sewer contract in question, deducted the current assets therefrom and found that the balance was less than the debt limit. Whether the sewer contract was an indebtedness or not, the limit not being exceeded, it was immaterial to classify it.

Before considering some of the accounting difficulties which have confronted the Supreme Court of Wisconsin in debt limit cases, it seems advisable to understand the control provided for regulating the liabilities which cities incur, and the accounting practices relating thereto. The city of Milwaukee, for example, operates currently on an annual budget and on bond project appropriations. The budget is supported and balanced by an annual tax levy and miscellaneous revenues estimated in advance to be derived from the state income, gasoline and utility taxes prorated to the city, water department revenues, license fees, rents and numerous other sources. The bond project appropriations are supported by the proceeds from the sale of bonds in cash or equivalent resources in the city treasury.

The city maintains an appropriation ledger in which there are some 3,000 appropriation accounts, the large majority of them being budget appropriation funds and the remainder, bond project funds. Each fund or account at the beginning of the year is credited with its share of the current resources and current revenues provided, as determined in the budget or by the bond proceed balance.

Before the city can make any contract the comptroller must refer to his appropriation accounts. He may not countersign a contract unless there is sufficient credit to the fund against which it is to be charged. If a bond project is not completed and its fund is exhausted, the final contract necessary to complete it cannot be signed, because to do so would incur an obligation beyond the amount of current resources provided for that purpose. If the credit to the snow removal fund, for example, is exhausted before the end of the year, the payrolls for the

\(^{13}\) 110 Wis. 660, 66 N.W. 681 (1901).

\(^{14}\) The court said:

"Our conclusion is that debts for the ordinary running expenses of a city and debts within the power of the city to contract, payable within a year out of the incoming revenues, actually levied or in good faith intended to be levied are not such as are comprehended within the last [mandatory future tax levy] clause of the constitutional provision quoted."
laborers cannot be signed by the comptroller, because the current revenues allotted to them have all been expended. The remedy in such instances is for the common council to make an appropriation from the contingent fund if it has resources to its credit and transfer this credit to the bond project or snow removal fund in the appropriation ledger. But if the contingent fund is depleted and no budget revision can be made, then the proposed contract or the continued snow removal, if they are to be carried out, will not be current expense obligations of the city, but must be provided for as indebtedness limited by the constitution. This is so except for the possibility of levying an extraordinary tax within the current year to provide for them. Section 67.12 (1) to (4) of the Wisconsin Statutes authorizes a temporary loan to a municipality to pay its current and ordinary expenses but imposes a condition precedent to such loan that a resolution be adopted levying a tax for the amount of the loan which shall be carried into the next tax roll. Such an extraordinary tax becomes a current revenue of the municipality and as such it will support the note or obligation to repay the money borrowed. The proceeds of the loan taken into the treasury are current resources of the city which support the payrolls or contracts to fund which the loan was obtained. Neither such temporary loan based upon an extraordinary tax levy nor the liabilities incurred to be paid out of it constitute indebtedness.

But, unless such extraordinary current tax levy is made, the obligation of the contract to finish the underestimated bond issue project or the payroll obligation to carry on the snow removal used as illustrations above will be indebtedness. If the five per cent limit has been reached the contract and further snow removal are prohibited. If there is a debt margin, the council must, at the time the indebtedness is incurred, provide by irrepealable tax levy for one or more future years for the payment of the principal and interest. More likely the common council will issue bonds for the completion of the underestimated bond project and to make up the deficiency in the snow removal fund. The cash from the sale of the bonds would go to the credit of the depleted funds and the bonds would be “indebtedness” to be provided for under the mandatory future tax levy clause of the constitution. The new bond project contract and the new snow removal payrolls will then be current expense obligations and not “indebtedness.”

It will thus be seen that “indebtedness” of a city is incurred not only when bonds are issued, but also when contracts are signed or work undertaken when there is not a sufficient credit in the appropriation ledger available for it, which credit in turn represents current resources of the city on hand or current revenues collected or in the process of collection. It will not do for the municipal officers to say, that although
two accounts are being overdrawn there are many other accounts with substantial credits representing surplus current resources or revenues which will offset the indebtedness created by the overdraft. These credit balances in the other funds are not available for such an offset ordinarily. To be made so available they must be diverted from the purposes for which they were provided. As long as they stand as provision for the particular purposes for which they were set up in the budget, they are resources which are not available as offsets.

On the other hand, it is not the size of the contract or the nature of the project which makes the municipal liability thereon an "indebtedness." Can the contract for the building of a schoolhouse be a current expense and not an "indebtedness"? Does the large amount of money required preclude its classification as a current expense? Must it be indebtedness because it provides for a permanent capital improvement?

If the schoolhouse is to be built with the proceeds of a bond issue, the bond issue will certainly be an indebtedness, but the contract for construction charged against the fund in the appropriation ledger supported by these proceeds is not an indebtedness. It is a current expense obligation within the limits of the current resources on hand. Conceivably the schoolhouse may be built by an appropriation in the annual budget supported by increased taxes levied in the year for the purpose. The construction contract will then also be a current expense obligation since it is provided for by revenues levied therefor within the current year. By special statute the city of Milwaukee is permitted, with the approval of its electors by referendum, to undertake a five year program of school construction to be provided for by five annual tax levies. Under such a plan, construction contracts let in one of the five years within the limits of the tax levy for that purpose in that year will be current expense obligations and not indebtedness limited by the constitutional provision.

A municipal obligation, once incurred, may pass through several forms without changing its original character. For example, if the city purchasing agent buys a typewriter and the comptroller, finding a sufficient credit in the proper equipment appropriation account signs the contract, a current expense obligation is incurred. The comptroller charges the contract amount against the equipment fund and credits his contracts payable account. When the typewriter is delivered a city order is issued in payment and charged against the contracts payable account and credited to the warrants payable account. But all this bookkeeping has not made the city order anything but a current expense obligation in precisely the same amount as the original contract for the payment of which it was issued. If the holder of the city order

\[15 \text{Wis. Laws 1927, c. 511.}\]
negotiates it to his bank, the obligation is not changed. If the city makes
the arrangements at the bank for several holders of its orders and pro-
cures a single loan giving one note to the bank to take the place of the
several orders, there is no increased liability of the city. Nothing more
than a consolidation of several current expense obligations has taken
place in this refunding operation.

When tax collections are delayed the occasion for current refunding
loans increases. When property taxes become delinquent in the city of
Milwaukee the city treasurer holds his tax sale of the real estate in re-
spect of which the taxes remain unpaid. Private taxbuyers by their pur-
cesses turn cash into the city treasury in exchange for tax sale certifi-
cates, but during recent years the city has become the largest taxbuyer
for want of private bidders. Tax sale certificates thus acquired by the
city still represent taxes in the process of collection or at least current
resources of the city which continue to support the credits in the ap-
propriation accounts of the city.

The lenient tax enforcement policy permitting five years generally
and three years in the city of Milwaukee for redemption from tax
sales seems to fix the period during which it would be proper to con-
sider such tax sale certificates as current resources. Until the redemp-
tion period has expired and the county or city officers holding such tax
sale certificates find it necessary to take title to the real estate covered
by them such tax sale certificates are transferable paper, representing
a very conservative lien prior to all mortgages and other liens on the
real estate. Perhaps the running of the redemption period ought to be
established as the proper time when the municipality holding such cer-
tificates ought to write them off of its statement of current resources
and be required to levy new taxes to make up the amount so deducted
in order to maintain a proper support for its contracts or warrants
outstanding which were entered into or issued in reliance upon the
taxes represented by the certificates. But the lenient period from three
to five years during which property taxes are in the process of collec-
tion leaves the municipality in a position in which it is compelled to
have some current expense obligations outstanding for the same length
of time. Whether such obligations be orders, warrants, or notes would
seem to be immaterial so long as the original liabilities they were issued
to refund were true current expense obligations. Upon this theory the
legislature adopted section 67.12 (9) of the Wisconsin Statutes per-
mitting current expense refunding notes, warrants or similar instru-

---

16 In Crogster v. Bayfield County, 99 Wis. 1, 74 N.W. 635 (1898), county owned
tax sale certificates were considered by the court as current resources of the
county.

17 Wis. Stats. (1933) §§ 75.01, 75.02.

18 Charter Ordinance 65 (1934 Charter Codification) § 24.32.
ments payable within four years, and the city of Milwaukee adopted sections 640.10 to 640.161 of its code authorizing so-called tax redemption notes, commonly known as baby bonds, payable on a fixed date not less than three nor more than four years from the date of issue and secured by the pledge of an equal par value amount of city tax sale certificates. Since current resources of the city, that is, city owned tax sale certificates, equal to the amount of the notes issued, are set aside and since the notes are issued only for the payment of current expense obligations of the city, there does not seem to be any occasion to consider them as other than current expense obligations. They are not "indebtedness" because they do not exceed the limits of the city's current resources and revenues in the process of collection provided for the payment of the obligations for the refunding of which they are issued.

The separate sphere of municipal finance, whether it be known as the "current expense" sphere as indicated in the decisions of the courts of Iowa and other states or as the "cash basis" sphere as defined in Earles v. Wells in Wisconsin permits a municipality to operate currently and to furnish the necessary services of government even while tax collections lag, regardless of the debt limitation established in the constitution. The boundaries of this sphere are sufficiently fixed in any municipality which operates on an annual balanced budget and with adequate fiscal control by modern municipal accounting.

Declining property values in 1931 and 1932 reduced the total assessed values in most cities more rapidly than the bond issues of such cities were retired in those years. Municipal bonds are usually retired serially at the rate of five per cent of the principal each year. But if assessed values declined at the rate of ten per cent in each of the years 1931 and 1932 a municipality with a narrow debt margin would have found itself with a total indebtedness in excess of the limit even though it had not issued any new bonds or incurred any new indebtedness. If the hiring of policemen and the running of the sewers or other public works of such a municipality were to be considered the incurring of "indebtedness" it would be contrary to the constitution to pay the policemen or the other laborers. Their contracts of hire would be void because they exceeded the debt limit. But it was never intended, whether the situation was foreseen or not, that the debt limit clause of the constitution could stop the functioning of the municipality. The only purpose of the limitation was to prohibit that species of bad govern-

---

19 The Milwaukee Code, § 640.10, provides in part:
"(a) Tax Redemption Notes. Notes of the City of Milwaukee secured by city tax sale certificates to be known as tax redemption notes are hereby authorized, whenever the delay in tax collections prevents the city treasurer from paying the current expenses of the city in money."
ment which irresponsibly squandered money easily borrowed and left the repayment of it to the taxpayers of the future. Each new influx of municipal officers soon espouses the theory that the bridges and buildings are going to be enjoyed by the taxpayers of the next twenty years and those taxpayers should pay their share. But since the taxpayers of ten years hence are not voting at the next election there is no limit to what the officers are willing to build for their benefit at their expense. To place a definite control on the free application of this theory the constitution was amended in 1874, but not to stifle the ordinary functioning of municipal government within its current expense sphere.

It was said above that the constitutional debt limit provision needed judicial interpretation in its application to current expense obligations of municipalities in Wisconsin and to credit instruments created for the refunding of such obligations. None of the decisions of the Wisconsin Supreme Court which discuss Article XI Section 3 of the Wisconsin Constitution involved a municipal obligation which was within the sphere of current expense, unless it was the case of Herman v. Oconto, in which the court held that a sewer contract which the municipal officers intended to pay for out of taxes to be levied at the end of the current year was not such indebtedness to which the mandatory future tax levy clause was applicable, but which, even if it were considered indebtedness under the debt limit clause, did not exceed the limit of the city of Oconto at the time it was entered into. All the other debt limit cases dealt with municipal obligations, the payment of which was clearly projected into the future as a burden upon the taxpayers of the next and future years.

In the solution of such “indebtedness” cases the court was troubled by difficult questions of municipal accounting which arose from the efforts of attorneys seeking to sustain the contracts to demonstrate that the municipalities had large surpluses available to offset existing indebtedness and thus to increase the debt margin. In such cases, for example Rice v. Milwaukee, the city attorney contended that there was a cash balance in the city treasury of over a million dollars and a large amount of miscellaneous revenues, such as expected license fees, which should be deducted from the existing indebtedness in order to arrive at the debt margin of the city. But the larger part of the cash in the treasury was clearly reserved for appropriation accounts, like the school fund, and was not free money available to reduce the debt. The license fees and other miscellaneous revenues had been anticipated in the annual budget and were revenues in the process of collection which supported

---

20 110 Wis. 660, 86 N.W. 681 (1901).
21 100 Wis. 516, 76 N.W. 341 (1898).
and balanced the budget and were therefore reserved for the several appropriations of the budget and not available for the reduction of the city's debt. There was in reality no surplus to offset the debt, since the current resources and revenues were reserved and held to finance that separate sphere of municipal operations which is called "current expenses" or the "cash basis" transactions of the city.

The accounting difficulties of "indebtedness" cases are illustrated in *Riesen v. School District No. 4* where the court approved the practice of employing accounting experts to submit summary statements of the financial condition of the municipality in order that the debt margin may more readily be determined. The obligation of the school district questioned in that case was a school construction contract. It was intended to be a bond project, but the proposed bond issue was adjudged void and enjoined. The contract was plainly an "indebtedness" for which no funds had been provided. Again the proponent of the validity of the contract sought to convince the court that the cash in the general fund of the school district at the time of the contract was available as an offset against the district's indebtedness. But it was held that the cash on hand was reserved for the maintenance and operation of the schools and was not so available.

In arriving at the total indebtedness of the school district in the *Riesen* case the court included the sum of some temporary loans. The court said: "The district had made some temporary loans for which it had anticipated its revenues for the ensuing year. These amounts were likewise indebtedness within the constitutional limitation." At first glance this statement seems a precedent for classifying temporary loans as indebtedness. Two reasons are apparent however why the temporary loans in that case are unique and not to be confused with the ordinary temporary loans of municipalities to refund current expense liabilities. First, the loans in that case were made, not within the limits of existing revenues or resources in the process of collection, but in anticipation of the revenues of the ensuing year. Second, an examination of the case and briefs as well as the decision discloses that the district expecting to sell its school construction bonds had diverted its maintenance fund to the payment of the preliminary expenses of the building project. When the bond issue was enjoined it became evident that the preliminary expenditures had been improperly made. They were expenditures outside the scope of the revenues and resources of the district. Consequently the obligations to pay them were indebtedness and not current expenses. The temporary loans were made to refund that indebtedness by replenishing the maintenance fund diverted for its

---

22 Wis. 283, 212 N.W. 783 (1927).
payment. The character of the original obligation survived in the temporary loans. Since the amount in question was once an indebtedness, it would remain an indebtedness, regardless of change of form, for all purposes relating to the debt limit.

But none of these cases, with their complicated questions of municipal accounting, can properly be urged as authorities if and when a true municipal current expense obligation or a credit instrument for the funding thereof is challenged under the debt limit provision of the Wisconsin Constitution. If and when such an issue arises the weight of authority outside of Wisconsin will no doubt prevail. The great weight of authority throughout the country sustains the proposition that current engagements of a municipality within the current resources and current revenues provided, and the refunding thereof, do not constitute "indebtedness" limited in debt limit provisions like that in the Constitution of Wisconsin.24

An appropriate summary of the rules applicable to municipal current expenses and the debt limit may be found in the case of In Re State Warrants.25 There was a limitation on state indebtedness there involved. The limit had been reached and the legislature proposed to borrow money to cover appropriations for current expenses, which appropriations were provided for by taxes levied but not collected. The authorities were reviewed by the court and the following pertinent results were reached:

1. A constitutional provision adopted after a similar provision had been adopted and judicially interpreted in other states, should receive similar construction.

2. Under such construction it is held that an obligation to pay current expenses is not "indebtedness" within the meaning of the constitution; and certainly not such indebtedness as is forbidden by the Constitution.

3. Revenues provided for the current year may be treated as money constructively in the treasury.

4. Since current obligations may be incurred regardless of the

---


limitation of indebtedness, such obligations may be funded by contracting a single obligation to pay money to be used to defray them.

5. Interest, being merely an incident of the obligation, the contract to pay the same does not become a debt until the interest is due.

Even though temporary liabilities remain unpaid, within the current expense sphere of municipal finance, the municipality is not thereby "indebted." As was said in Earles v. Wells,26 "so long as the current expenses of the municipality are kept within the limits of the moneys and assets actually in the treasury and the current revenues collected or in the process of immediate collection, the municipality may be fairly regarded as doing business on a cash basis, and not upon credit, even though there may be for a short time some unpaid liabilities." If and when a municipal current expense obligation is questioned under the constitutional debt limit provision in the Wisconsin Supreme Court the quoted excerpt should find simple application.

26 94 Wis. 285, 289, 68 N.W. 965 (1896).