

Finance Committee Meeting Douglas County, Nebraska

Tuesday, August 12, 2014

The meeting convened at 11:14 a.m. in Room 903 of the Omaha-Douglas Civic Center, 1819 Farnam Street, Omaha, NE 68183. A copy of the Open Meetings Act is located on the wall near the entrance of the room. A notice of the meeting was published in the August 5, 2014 issue of The Daily Record. County Commissioners present at the start of the meeting were PJ Morgan, Clare Duda, Mike Boyle, and Pam Tusa. Others present at the meeting were Patrick Bloomingdale, Joe Lorenz, Diane Carlson, Catherine Hall, Marcos San Martin, and Kaieva Williams of Administration; Theresia Urich of the County Attorney's office; Dan Esch of the Clerk/Comptroller's office; Parker Schenken and Amber Preston of Baird Holm; and Bev Traub of the League of Women Voters.

1) Discussion of the U.S. Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiative and the potential implications for the outstanding securities issued by Douglas County.

County Commissioners Marc Kraft and Chris Rodgers entered the meeting during this item. Ms. Williams left the meeting during this item. Speaking during this item were Mr. Lorenz, Mr. Schenken, Ms. Preston, Commissioner Boyle, Commissioner Kraft, Commissioner Duda, Commissioner Rodgers, Commissioner Morgan, and Mr. Bloomingdale. Highlights from discussion included the following:

- Mr. Schenken said the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative is a broad-based initiative by the U.S. Securities and Exchange Commission (SEC) to address what the SEC views as an industry problem in a disclosure matter related to municipal bonds.
- Ms. Preston gave some background on how the MCDC Initiative came to be.
 - Ms. Preston said SEC rule 15c2-12 is the rule involved with this initiative.
 - Ms. Preston said 15c2-12 requires any issuer who's going out with a public offering to have certain undertakings and then continue to disclose those undertakings.
 - Ms. Preston said these undertakings would include audited financial statements, certain operating and financial data, and then "bad trigger events" such as defeasance or bankruptcies.
 - Ms. Preston said all of the bonds that are publicly offered will have undertakings on the Electronic Municipal Market Access (EMMA) database.
 - Ms. Preston said last summer the SEC got ahold of a couple of issuers, particularly big school districts, who hadn't done anything in the history of 15c2-12 compliance, even though their official statements said they had complied with 15c2-12.
 - Ms. Preston said the SEC believes this is a major problem and decided to adopt the MCDC Initiative.
- Mr. Schenken said he thinks the SEC's thinking is that the bond holders are entitled not only to get their official statement, but also annual information afterwards so that everyone has the same information for secondary trades.
 - Mr. Schenken said this would be similar to a registered offering on a corporate stock or bond that one might buy.

- Ms. Preston said if the County reviews its written continuing undertakings and decides that there is material non-compliance, then the County can voluntarily participate in the MCDC Initiative and file a report with the SEC before December 1st.
 - Ms. Preston said the SEC has said there will not be any monetary penalty if issuers voluntarily participate in the MCDC Initiative by December 1st.
 - Ms. Preston said if issuers don't voluntarily comply and the SEC comes in later, the punishment will probably be harsher.
 - Mr. Schenken said at this point determining what is material is difficult because the SEC has given no guidance on what it will consider to be material.
 - Mr. Schenken said one could argue that investors only have to take a few more steps to find the information they need, but he's unsure if the SEC will see it that way.
 - Mr. Schenken said until the SEC gives out further guidance, he thinks the County will have to assume that if a particular bond does not have all of the information linked up to it, that the County has an issue.
- Mr. Lorenz explained where he thinks the County may have potential exposure.
 - Mr. Lorenz said the County has eight to ten issues outstanding, and on all but two of those issues, First National Bank is the County's trustee.
 - Mr. Lorenz said on two of the issues, the Treasurer's office acted as the trustee.
 - Mr. Lorenz said the information for the EMMA is forwarded to First National Bank, who then registers the information for the individual offerings in the EMMA database.
 - Mr. Lorenz said the EMMA filings are tied to a CUSIP (Committee on Uniform Security Identification Procedures) number, which is an identification number for an individual security.
 - Mr. Lorenz said all of the County's individual securities were properly filed on the bonds where First National Bank was the trustee on the bond.
 - Mr. Lorenz said on the two offerings where the Treasurer was the trustee, the EMMA filings were not being tied in through their CUSIP, and that's where he thinks the County's potential exposure may be.
 - Mr. Lorenz said the Treasurer's office was chosen as the trustee in an effort to save the County money, but the Treasurer's office is not geared up to do EMMA filings because a lot of it is specialized work that securities trustees do.
 - Mr. Lorenz said the filings for one of these bonds was corrected when it was being refinanced.
 - Mr. Lorenz said on the other bond issue, he believes it would make sense from a compliance standpoint to make First National Bank either the trustee or the paying agent.
- Ms. Preston said underwriters will also have to go through and review all of the bond deals that they've underwritten, but their deadline to voluntarily report is September 9th.
 - Mr. Lorenz said Ameritas is the County's underwriter.
 - Mr. Schenken said he can't speak for Ameritas, but he has heard them say that they will talk to the County and they will not file anything that the County won't know about.
 - Mr. Lorenz said Bruce Lefler of Ameritas has said he would keep Mr. Lorenz updated on this issue.

- Mr. Schenken said Baird Holm’s recommendation at this point would be for the County to do a formal evaluation of where it stands against 15c2-12 to help determine:
 - 1) If there are any issues.
 - 2) If there are issues, are those issues material.
 - 3) If there is a conclusion that there is an issue and it is material, then somebody would need to guide the County through the process of submission by December 1st.
- Ms. Preston said if the County reports any issues, the SEC will likely issue a cease and desist order.
 - Ms. Preston said this cease and desist will not prevent the County from issuing bonds.
 - Mr. Schenken said the cease and desist order will be cease and desist not complying with the rules, now go forward and comply.
 - Ms. Preston said there will be thousands of public entities signing in to the cease and desist on this matter.
 - Mr. Lorenz said if the County does this cease and desist, he thinks that it’s going to require a formal resolution by the County Board.
- Mr. Schenken said based on what he has already seen and discussed, he doesn’t believe the County has any big problems.
- Ms. Preston reiterated that there will be no monetary penalty if the County participates in the MCDC Initiative by December 1st, and that a very large number of public entities across the nation will be participating in this initiative.
- Mr. Lorenz said he would like for the County to continue to work with Baird Holm on this matter and have the County make all of the appropriate filings as necessary.
 - Mr. Bloomingdale said Baird Holm is the County’s bond counsel so he doesn’t believe anything needs to go in front of the County Board in order to use Baird Holm’s services on this matter.

2) Other business.

There was no other business.

The meeting adjourned at 11:36 a.m.