



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 16, 1997

To All Bond Counsel:

Re: Public Finance Division Offices to be Moved, Various Legal Matters

1. Public Finance Division Offices to be Moved. On July 25, as part of a larger move of a number of divisions within the Office of the Attorney General, the Public Finance Division will begin a move to the Price Daniel Building. However, the intricacies of the overall move will require that the division be in a temporary location with most of our files inaccessible for approximately a week, with a second move into our permanent location on the sixth floor of the Price Daniel Building anticipated to be on August 4. The move, and the temporary holding location, will be extremely disruptive. I urge you to avoid to the extent possible scheduling closings during that time and immediately before and after, as there will be additional time lost in packing and unpacking and setting up. We will not accept transcripts on Friday, July 25, nor on Monday, August 4, and those days will not count as business days for the purpose of transcript review unless it is absolutely necessary. If these dates change you will be notified promptly. Until August 5th, transcripts should continue to be sent to our current address. **Beginning August 5th**, transcripts sent by overnight or other couriers should be sent to the following address: **Price Daniel Building, 209 West 14th Street, 6th Floor, Austin, Texas 78701.** Our mailing address remains the same.

2. Debt Service Calculations. In several recent combination new money and refunding bond issues, the calculation of gross debt service savings with respect to the refunding portion appears not to have taken into account issuer contributions to the escrow fund or to pay refunding bond issuance costs. We believe it appropriate, in order to measure the true gross and present value debt service savings (or loss) of a refunding, to deduct such contributions from the amount by which the refunded bonds' debt service exceeds the refunding bonds' debt service.

In addition, in the case of school district combination new money and refunding bond issues in which it is necessary for districts to allocate the aggregate principal amount between the refunding and the new money portions to calculate (i) debt service savings or loss with respect to the refunding portion, (ii) the annual debt service of the new money portion (to demonstrate compliance with the 50-cent test under section 45.003(e), Tex. Educ. Code) and (iii) the amount of premium or original issue discount attributable to the new money portion, districts should utilize the same principal allocation for each of these purposes.

3. Refunding Bond Propositions - Water Districts. We will apply the following interpretations to water district election propositions that authorize the issuance of refunding bonds:

a. Proposition authorizes the issuance of a specific dollar amount of refunding bonds: the specific amount authorized by these propositions will be construed to be an amount in excess of the principal amount of the refunded bonds (it being assumed that article 717k authorizes the issuance of the refunding bonds in an amount not to exceed the principal being refunded). We will, therefore, subtract from the voted authorization only the principal amount of the refunding bonds that is in excess of the amount of bonds being refunded.

b. Proposition provides for the issuance of refunding bonds in an amount equal to (or not more than) 1.5 times the amount of the new money bonds authorized therein: these propositions will be interpreted to authorize a specific dollar amount equal to 1.5 x the principal amount of the new money bonds authorized in the proposition. This amount will be construed as described above, with only the principal amount of the refunding bonds in excess of the amount of bonds being refunded being considered "used up" by the refunding.

c. Refunding of refunding bonds: generally this will be allowed using any remaining voted authorization to cover the overage, as described above. In determining the amount of voted authorization used, reference should be to the principal amount of the bonds being refunded, and not to the bonds which were previously refunded by the bonds being refunded. (Since previously issued refunding bonds have previously been allocated the necessary authorization for any excess principal amount over the bonds refunded thereby, we are not concerned with the relationship of the proposed refunding bonds to the originally refunded bonds, no matter how many series of intervening refunding bonds may have been issued.)

d. Recalculation of voted remaining authorization: We will not allow recalculation of available voted authorization if the official action for a prior refunding transaction specifically set forth the amount of voted authorization being used for, and/or remaining after, the refunding. However, if no express accounting is given in a prior official action, we will allow bond counsel and the issuer to recast amounts of voted authorization previously used and currently available using the methodology set out above.

4. Competitive Bidding - Corporations Formed Pursuant to art. 717s, Tex. Rev. Civ. Stat. Ann. and Ch. 431, subch. D, Tex. Trans. Code and Similar Statutes. Corporations formed pursuant to these statutes issuing bonds on behalf of governmental entities must comply with procurement statutes, including competitive bidding requirements, applicable to the governmental entity where "public money" will be used to pay, through a lease-purchase agreement or otherwise, the debt service on the bonds. Where the source of payment is revenues generated by that particular facility (and such is not a component part of a municipal system) the applicability of the public procurement statutes is not sufficiently clear for us to

require a covenant regarding compliance with respect to such statutes. Thus, for example, we do not require a certification of compliance with competitive bid requirements for golf courses where the only funds used to pay the agreement which supports the bonds issued by a public facility corporation are green fees and similar fees. Similarly, multifamily housing owned by a housing finance corporation or a public facility corporation whose bonds are secured only by the housing and the rentals does not trigger competitive bid requirements. On the other hand, it has been and remains our position that financings undertaken by a public facility corporation payable from sponsor obligations, such as for a school district pursuant to art. 717s, Tex. Rev. Civ. Stat. Ann. and sec. 271.004, Tex. Local Gov't Code, must include a representation that the procurement statutes applicable to the sponsor will be complied with in the construction of the facility.

5. Anticipation Notes Pursuant to art. 717w, sec. 4, Tex. Rev. Civ. Stat. Ann. - Attorney General Approval. We are taking the position that notes issued under this provision qualify for approval of procedures in a manner similar to the approval of commercial paper. That is, we agree that a qualifying issuer may provide in the note order or ordinance for the issuance of more than one series of notes, and only the initial series requires Attorney General approval. There are several requirements for notes issued in this manner: 1) the first note or series of notes must be submitted for Attorney General approval and registration with the Comptroller, 2) the specific purpose for the first note or series of notes must be set out in the order, 3) the purpose for subsequent notes or series of notes must also be specified, or, if only general purposes are specified, the obtaining of governing body approval of these purposes must be provided for in the order or ordinance; this can be done through the budget approval process or similar process, but the determination of the purpose for notes cannot be delegated. This procedure is available only for anticipation notes issued pursuant to article 717w.

6. Variable Rate Bonds/Fees - Non-717q Issuers. Cities, counties, and school districts and other governmental entities which do not qualify as issuers under art. 717q, Tex. Rev. Civ. Stat. Ann., have no authority to enter into credit agreements to support variable rate bonds. As you know, we have allowed the use of standby bond purchase agreements by these entities where a bank or other financial institution will purchase the bonds under certain circumstances and there will be no credit agreement in the transaction. We have in the past struggled with whether there is an appropriate way to pay fees charged after the closing of the financing. It now appears to us that non-717q issuers are limited to paying fees up-front, at the time of closing. Thus, there should be no payments made to the standby bank under the standby bond purchase agreement. The only payments made to the bank, other than the fee paid at closing, would be bond payments made solely pursuant to the terms of the bonds and the bond ordinance, order or resolution. It is our intention to implement this position in the near future; please let us know promptly if you believe it to be incorrect.

7. Variable Rate Tax Bonds - Available Funds Must Be in Interest and Sinking Fund.

Another long-held position of the Public Finance Division is that the tax levy for variable rate bonds must be at a rate sufficient to pay debt service on the bonds assuming that the bonds bear interest at their maximum allowable rate. The levy may take into account funds on hand and available to pay debt service on the bonds, *but such funds must be held in the interest and sinking fund for the bonds.*

8. Timing Requirements for Conduit Transcripts. We would like to remind some of you that we still have timing requirements for filing bond transcripts and that these requirements relate not to the submission of "shell transcripts," but to the submission of substantially complete transcripts with substantially final forms of documents. It has become the practice of some to file what appear to be, at best, initial drafts, in order to "meet" our requirements and to worry about the details of the transaction later— sometimes the day before closing. The practice was particularly widespread this year with respect to the submission of transcripts subject to the State's allocation and reservation system for private activity bonds.

The attorneys in this office do attempt to review transcripts in an expeditious manner, recognizing both our need to follow our own guidelines and your need for timely feedback, but it is extremely frustrating to complete a thorough review of a set of documents that is full of blanks and quite probably bears little resemblance to the final transaction or, in some cases, even the current draft of the working group. When the more complete documents appear at the last minute it becomes necessary to thoroughly "re-review" most of the transcript. Unnecessarily stressful and strained closing days result from these practices.

We believe that with the recent changes to the allocation statute issuers should now be able to meet our timing requirements. (Please refer to the June 4, 1992 and January 26, 1994 letters "To All Bond Counsel" for our current timing requirements.) Please be advised that we will not consider a transcript to have been submitted if it is not substantially complete with documents in substantially final form. An index of documents is required to be with the initial submission in order for the transcript to be substantially complete. We do not want to see anyone lose allocation, but we will enforce these requirements.

Having said the above, we would like to thank the attorneys, legal assistants and secretaries that precleared deviations from our stated requirements and also those that took the time to recognize the exceptional effort that was made by both our attorneys and our staff to allow certain transactions to meet the allocation deadlines. These discussions were both helpful and appreciated.

9. Timing Requirements - Transcripts for Housing Bonds. Housing transactions, with respect to both single family mortgage bonds and residential development financings, have been especially problematic this year. Transcripts were submitted that were very far from being in substantially final form. We hope that the extended closing period for allocation transactions will alleviate this problem with housing bonds, because we will apply our timing

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requirements to these bonds as well. We understand that as bond counsel you often have little control over the actual timing of these transactions, so please ensure that the parties that do are aware of our position. In addition, when a transaction includes "innovations" not previously used by Texas issuers, it would be extremely helpful if this office were given a little "heads up."

Please note that beginning September 1, 1997, we will require a certification in the general certificate of each housing finance corporation that they have complied with the reporting requirements of section 394.027, Tex. Local Gov't Code. In addition, Lynn Stuck will be contacting some of you in the near future to discuss the recent amendments to the Housing Finance Corporations Act and changes to our rules with respect thereto.

10. Bond Review Board Information Requirements - Revised Form. Attached is a revised form document on which to provide the information requested by the Bond Review Board pursuant to sec. 3.002(h), art. 717k-8, Tex. Rev. Civ. Stat. Ann. The changes are: 1) item 15 has been revised, 2) item 18 has had an additional requirement with respect to "new debt", 3) item 19 has been added, 4) on the second page two questions have been added regarding whether the underwriter paid rating agency fees and bond insurance, 5) the definition of underwriting spread has been changed, and 6) a line has been added for the person completing the form. Please begin using the new form as soon as practicable.

Very truly yours,



Jim Thomassen
Assistant Attorney General
Chief, Public Finance Division

JAT:sbn
fjal/misc/abcjun97.wpd

Attachment

**OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION**

B. Additional Information (continued)

20. Costs of Issuance – please provide best estimate of costs.

If final costs are significantly different, please submit changes directly to the Texas Bond Review Board. Call (512) 463-1741 or (512) 475-4802 (FAX).

SERVICE	FIRM	ONE-TIME FEE (in dollars)	ANNUAL FEE (a)
Bond Rating	Duff & Phelps		
	Fitch		
	Moody's		
	Standard & Poor's		
Other General Costs of Issuance (b)			
Any Specialized Costs of Issuance (c)			
Credit Facility			
Bond Insurance			
Total Underwriting Spread (d)			
Did underwriter pay rating fee(s)?		Yes	No
		Which one(s)?	
Did underwriter pay bond insurance fee?		Yes	No

PARTICIPANTS	FIRM
Financial Advisor	
Bond Counsel	
Paying Agent/Registrar	
Underwriter(s)	

- (a) relates to the ongoing fees or recurring costs of a financing for services such as paying agent, remarketing agent, credit provider and other similar services (may be expressed as a formula as appropriate).
- (b) e.g., bond counsel, financial advisor, paying agent, printing, AG approval.
- (c) e.g., remarketing fees, escrow verification fees, etc.
- (d) the cost for marketing and selling the bonds, including takedown, structuring fee, underwriting risk, and expenses.

PERSON COMPLETING FORM:

Name _____

Telephone No. _____

Fax No. _____

**OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION**

**Additional Transcript Requirements
Pursuant to HB 1564**

The following information is to be included in the transcript submitted to the Office of the Attorney General for the purpose of obtaining Attorney General approval of the issuance of bonds or other obligations. This information has been designated by the Bond Review Board as that to be collected pursuant to HB 1564, 74th Legislature, Regular Session (Tex. Laws 1995, ch. 383, at 2930).

A. An additional copy of the Final Official Statement and the following information, if not included in the Final Official Statement or such statement has not been prepared.

1. Name of bond issue.
2. a) par amount of issue;
b) dollar amount of bond premium, if any;
c) dollar amount of bond original issue discount, if any.
3. Dated date.
4. Closing date (expected delivery date, on or about).
5. By year, maturity amounts, coupon rates, prices or yields.
(If no reoffering yield (NRO) indicated, please provide yield separately.)
6. Call provisions, including premiums, if any.
7. Mandatory redemption provisions.
8. Debt-service schedule, principal and interest, and annual totals, with the fiscal year identified.
9. Use of derivative products associated with financing.
10. If applicable, schedule of bonds refunded, including, by year, principal amount, coupon, and interest cost.
11. Pledge: tax (ad valorem, sales, other), revenue, combination.
12. Type of credit enhancement (including PSF guarantee).
13. Rating service(s) and rating(s) assigned to issue.

B. Additional Information.

14. Type of sale: a) competitive c) private placement
 b) negotiated d) other (explain)
15. Pricing: Negotiated sale: date _____ time _____ of verbal award of bid;
 Competitive sale: date _____ time _____ of bid opening.
 Private placement: date _____ of agreement on interest rates.
16. If purchaser of bonds is a governmental entity, such as the Texas Water Development Board, please name purchaser:

17. If a refunding bond issue, please provide final schedule of cash and present value savings (loss).
18. If a school district refunding bond issue, and the refunding involves "old debt" per the Texas Education Code, please provide schedule of principal and interest payments of refunding bonds associated with "old debt." If the same issue also involves "new debt," please provide a schedule of principal and interest payments on the "new debt" portion as well. These two schedules together should equal total debt service by maturity.
19. CAB's and CIB's - please provide the per annum bond interest rates by maturity as shown in the bond order document.