



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 11, 1991

To All Bond Counsel:

Re: Prepayment of Paying Agent Fees for Refunded Bonds

It is our position that, in order to make firm financial arrangements for an advance refunding under Article 717k or other refunding statute, it is necessary that (1) the fees for performing the paying agency function for the life of the refunded bonds be paid at closing, (2) the paying agent fees be provided for by including them in the escrow for the refunded bonds, or (3) the paying agent agrees to continue to provide the services for the life of the refunded bonds, with the remedy for nonpayment being solely an action for amounts owing under the paying agent contract. As best as I have been able to determine, such has been the position of this office for quite some time. It is apparently the case, however, that this position has not been uniformly communicated to the bond community, and not always enforced. Lack of enforcement was a result of oversight, rather than a policy decision, however.

We are cognizant that some issuers feel that this requirement can be economically burdensome. While we are sympathetic to the problems that may occur, we do not expect that the requirement will be changed.

Please note, however, that there are some means to alleviate the problem, at least to some degree. For example, with sufficient advance planning, a change of paying agents could be undertaken. Also, please note that we do not require that the fees for acting as registrar be paid at closing. It appears to us that it is the paying agency function which is essential to firm financial arrangements, but that the registration function, basically the transfer and exchange function, is a matter of convenience to the bondholder. This service could, if the issuer disappeared, be paid for on a transaction by transaction basis by the bondholder. Thus, these fees can continue to be paid by the issuer over time if it should so elect. Whether this would result in a worthwhile savings would, of course, depend on the particular circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Thomassen".

Jim Thomassen
Assistant Attorney General
Chief, Public Finance Section

JT:jh