



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1994

To All Bond Counsel:

Re: Timing Requirements, Certificates of Obligation, Article
717w, Interest Rate Swaps, Jails and Other Matters

1. Timing Requirements

Commencing February 1, 1994, the Public Finance Division will return to the previous timing requirements for filing all bond transcripts: A standard or traditional transcript must be submitted ten (10) business days and a conduit transcript twelve (12) business days prior to the date of closing or requested approval. As is presently the case (i) executed versions of all documents submitted in unexecuted form and outstanding requirements for final approval must be submitted at least three (3) business days and (ii) the initial bond(s) at least five (5) business days prior to the date of closing or the date approval is requested. For your convenience a copy of the time requirements, as disseminated June 4, 1992, is attached hereto.

2. Notice of Intent to Issue Certificates of Obligation

As we have indicated previously, notices of intention to issue certificates of obligation must include a more specific description of the purpose than merely a recital of the statutory language; such notices should give members of the public a fair idea of the actual project and/or use of the proceeds of the certificates of obligation. Construction of any public works must include a general description of such public works. Purchase of materials, supplies, equipment or machinery must state at least the general type or use of such items. Purchase of land, rights of way or buildings must state, at the minimum, the use to which the land, rights of way or buildings are to be put. Purchases of land or buildings should additionally indicate the general location of such land or building within the city or county.

3. Article 717w

As most of you are aware Tex. Rev. Civ. Stat. Ann. art. 717w (Vernon Supp. 1994), was enacted this past legislative session to authorize cities and counties to issue tax or revenue anticipation

notes for various purposes. There have already been a number of questions regarding the correct interpretation of the provisions of such statute and undoubtedly more will arise. Following are some preliminary thoughts: (a) We are not certain that Section 9 of Article 717w provides sufficient authority to pledge revenues not authorized by another statute to be pledged to secure bonds or other obligations of the issuer; it is our view, however, that such section does not provide a method to pledge any or all revenues to certificates of obligation under Tex. Local Gov't Code Ann. § 271.052 (Vernon 1988) (in order to be pledged under Section 271.052, the specific revenue must be mentioned in the statute allowing the revenue pledge); (b) based on the language of Section 9, we do not believe that combination tax and revenue pledges are authorized under Article 717w; (c) based on the language in Tex. Rev. Civ. Stat. Ann. art. 2368a, § 11 (Vernon 1971 & Supp. 1994), pledges of utility system revenues to obligations issued under Article 717w would appear to us to require compliance with the notice and referendum requirements of Article 2368a; and finally (d) a county may exercise the authority granted under Tex. Rev. Civ. Stat. Ann. art. 717q (Vernon Supp. 1994), only with respect to and in conjunction with obligations issued under Article 717w.

Any comments, information or arguments you may wish to supply with respect to the above are welcome.

4. Interest Rate Swaps and Other Credit Agreements

Article 717q was recently amended to allow issuers to enter into and execute credit agreements, including interest rate swap agreements, in relation to the issuance, payment, sale, resale or exchange of securities (which includes obligations supported by ad valorem taxes), at any time and submit the proceedings relating thereto to the Attorney General for approval. The amendments give rise to a number of legal and policy concerns regarding, among others, the nature of this new type of obligation represented by such credit agreements, the characterization of an issuer's obligation thereunder or under supporting agreements and the parameters for approval by this office based on such nature and characterization. At this time we have not determined our position on all issues, nor do we feel that we are even cognizant of all the possible issues. We invite any and all comments regarding this matter. However, we have addressed several questions which have already arisen with regard to the new amendments. For example, we will require that governing law provisions in a swap agreement be that of Texas; the rights, duties and obligations of the swap provider may be interpreted and construed in accordance with other than Texas law. Furthermore, for interest rate swaps secured by ad valorem taxes, it appears to us that swaps constitute indebtedness and must be supported by a tax levy. How this tax levy is structured or how it relates to that contained in the bond

ordinance or order or whether the proceeds of such tax levy may be used for any termination payments is uncertain. Also, it seems to us, that for floating-to-fixed rate swaps secured by ad valorem taxes, there should not be any basis risk. Given this uncertainty, we would request that you contact us regarding any transactions contemplated under the new amendments before submitting related proceedings for approval.

5. Financing of Jails and Detention Facilities

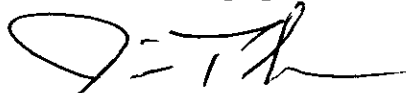
As many of you are aware, this office has for some time wrestled with the issue of determining whether the financing of jails or detention facilities of substantial capacity intended to house inmates of governmental entities other than or in addition to those of the sponsoring entity meets the public purpose requirement for the issuance of bonds or other securities. We have now decided, in general, to rely on the review of such facilities undertaken by the Texas Commission on Jail Standards (the "Commission"). Therefore, for any such future transactions we will require, in addition to the usual transcript items, a letter from the Commission's executive director, addressed to this office, approving and recommending the approval by this office of the financing of the proposed jail or detention facility. This requirement supersedes those stated in items 2 and 3 of the September 7, 1989 All Bond Counsel letter.

6. Returned Transcripts and Other Matters

Please be advised that as a general rule we will return inactive transcripts of proceedings after six (6) months from the date submitted. If the transaction is reactivated, the proceedings must be resubmitted along with a new filing fee.

Finally, unless specifically requested, please do not, and request other parties to the transaction to not, FAX lengthy documents. We have one FAX machine and the transmission of lengthy documents (e.g. verification reports), the hard copies of which are generally delivered overnight in any case, ties it up unnecessarily.

Very truly yours,



Jim Thomassen
Assistant Attorney General
Chief, Public Finance Division

OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION

Minimum Timing Requirements for Submissions

Transcript Submittal, Traditional Transcripts:	10 business days
Transcript Submittal, Conduit Transcripts:	12 business days
Submittal of Initial Bond or Bonds:	5 business days
Submittal of Final Executed Documents and Requirements for Final Approval:	3 business days*

All times refer to the number of days prior to the day of closing. Transcripts, initial bonds, final executed documents and final approval requirements must be submitted by 3:00 p.m. in order for the day of submission to be counted as one of the days. The day of closing does not count. If these time frames are met, bond counsel can expect delivery of the transcript and opinions to the Comptroller two days prior to closing, in time for the bonds and opinions to be sent out on the day the Comptroller receives them. For closings in Austin, or if bond counsel states that it is satisfactory for the bonds to be registered by the Comptroller the day before closing, one day may be subtracted from the time requirements. If bond counsel desires approval prior to such time, the above times will refer to the number of days prior to the day for which such approval is requested. Please note the above are minimum requirements.

*If there are only a small number of outstanding requirements for final approval, and none of these will require substantial time to review, they will still be timely if received by federal express or other overnight delivery the morning following the 3:00 o'clock deadline.