



July 21, 1999

To All Bond Counsel:

Re: Position of the Office of the Attorney General Regarding Certain Provisions of Senate Bill 4, Acts 1999, 76th Legislature, Regular Session ("SB 4")

After carefully considering all of the memoranda and letters submitted in response to the All Bond Counsel Letter of June 30, 1999, and undertaking such additional legal research as was necessary, we have concluded as follows:

1. Pursuant to the amendments made by SB 4 to section 42.301 (all citations herein are to the Texas Education Code), the guaranteed yield component of the Foundation School Program ("Tier 2") is unavailable for the payment of debt service or capital outlay, including payments on lease-purchase agreements.
2. The basic allotment portion of "Tier 1" funds, as provided by section 42.101, is available to pay lease-purchase agreements pursuant to section 45.105(c).
3. The basic allotment portion of Tier 1 funds is available for determining compliance with the \$0.50 test pursuant to section 45.105(c) ("and for other purposes necessary in the conduct of the public schools determined by the board of trustees"), prior Texas Education Agency interpretation of the use of Tier 1 funds, legislative history and *Edgewood Independent School District v. Meno*, 917 S.W.2d 717 (Tex. 1995). See also *Miami Independent School District v. Moses*, 989 S.W.2d 871 (Tex. App. - Austin, 1999, pet. filed).

We recognize that there are additional questions relating to SB 4 which remain to be addressed. It is our intention to address these questions, and others of which we may not be aware as yet, to the extent they are within the purview of this office, on a timely basis.

Very truly yours,

Jim Thomassen
Assistant Attorney General
Chief, Public Finance Division