



October 2, 2001

**Via facsimile**

To All Bond Counsel:

Re: School District Lease-Purchase Financing of School Buildings

We are aware of several school districts that acquired new school buildings using a lease-purchase or similar agreement that was not submitted to the Attorney General for approval, as required by section 271.004 (all statutory citations are to the Local Government Code except where noted). Some of these agreements purported to be authorized by section 271.005, which authorizes lease-purchase financing of personal property. As is evident from the definitions of real property, personal property and improvement in section 271.003, a school building does not qualify as personal property. Additionally, building materials do not retain their character as personal property once incorporated into a building, and parties cannot by contract change personal property into real property. See Tex. Att'y Gen. Op. No. JM-800 (1987). In sum, only section 271.004 authorizes a school district to enter into a lease-purchase or other financing agreement to acquire a school building, and such agreement pursuant to that section requires Attorney General approval.

Even though not approved by the Attorney General as required by section 271.004, these agreements are likely to remain in place because the Texas Supreme Court held that taxpayers do not have standing to challenge lease-purchase agreements for school buildings which have been completed and placed in service. See *Bland Independent School District v. Blue*, 34 SW 3d 547,558 (Tex. 2000). We have also been advised, in the several instances of this type of financing that have come to our attention, that school officials were either unaware of the legal requirements for such agreements or have since left the school district. In these circumstances, the Attorney General's refusal to approve bonds to purchase or refinance school buildings constructed under such agreements would not affect the attorneys, financial advisors and financial institutions that took part in the financings (apparently the parties responsible for the law not having been followed), but rather would negatively impact the residents and students of school districts seeking to extricate themselves from the consequences of financially unattractive lease-purchase agreements (without repudiating the agreements).

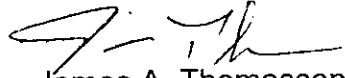
Therefore, if such districts vote bonds, pursuant to section 45.001(a)(1)(B) of the Education Code, for the acquisition or refinancing of a school building ostensibly financed under subchapter A of chapter 271, we will approve those bonds, assuming compliance with other customary requirements, even though the original financing was not approved by the Attorney General as required by section 271.004. See All Bond Counsel Letter dated March 17, 2000, para. 6. School districts are being concurrently advised of this position, which will apply only to those agreements entered into prior to the date of this letter.

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Please share this information with financial advisors with whom you may work in this area to help assure that school districts submit any lease-purchase agreements for school buildings to the Attorney General as provided by law.

Yours truly,



James A. Thomassen  
Assistant Attorney General  
Chief, Public Finance Division