



# The Attorney General of Texas

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Honorable Oscar H. Mauzy, Chairman  
Senate Education Committee  
Texas Senate, State Capitol  
Austin, Texas 78711

Opinion No. MW-302

Re: Issue of new tuition revenue  
bonds under chapter 55 of the  
Education Code

Dear Senator Mauzy:

You have asked whether universities authorized to issue tuition revenue bonds up to certain maximum amounts under the provisions of sections 55.17, 55.171 and 55.172 of the Education Code can issue new bonds as they retire the original debt, so long as the statutory maximum amount is not exceeded.

Section 55.17(e)(2) authorizes the board of regents of Texas Tech University to issue tuition revenue bonds in an amount "not to exceed \$35 million" for the purpose of providing facilities for the School of Medicine at Lubbock. The University of Texas System, the Texas A & M System, the University of Houston and Pan American University may issue bonds in amounts limited in similar language. See Educ. Code §§55.17(f), 55.171, 55.172.

The discretion inherent in the phrase "not to exceed" is a recognition that a lesser amount may suffice but in no event can a greater amount than the stated amount be used. Train v. City of New York, 420 U.S. 35 (1975); Zurich General Accident & Liability Insurance Co. v. Thomas, 187 S.W. 2d 689 (Tex. Civ. App. - 1945, no writ). As we understand your query, the universities wish to continue to issue new debt up to the respective ceiling amounts as old debt is retired.

A perusal of certain constitutional provisions containing authorization for bonded indebtedness in identical language is instructive. Article III, section 49-b of the Texas Constitution authorizes bonds to purchase land for resale to Texas veterans. When an increase in the dollar amount was needed, the provision was amended to provide for higher dollar amounts. The Veterans' Land Board did not issue new bonds as old bonds were retired. Similarly, article III, section 49-d-1 increased the dollar amount authorized for the Texas Water Development Board by article III, section 49-c. Article III, section 50b-1 increased the dollar amount authorized for bond-financed student loans by article III, section 50b. In each case, the authorizing

language is identical to that contained in sections 55.17, 55.171 and 55.172 of the Education Code. In each case, a constitutional amendment was required when additional funds were needed.

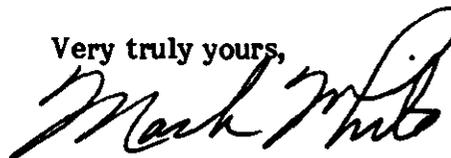
Legislative history also supports our view that the universities may not issue new debt up to the ceiling amounts as old debt is retired. The original version of section 55.17 had no dollar ceilings; the final version did. While records of floor debate were not kept for the 62nd Legislature, which passed section 55.17, there are records of floor debate for the 63rd Legislature, which passed sections 55.171 and 55.172. These records indicate that the amounts authorized were an aggregate amount and that additional amounts would call for new legislation.

It is our opinion that additional legislation is required before the universities may issue further tuition revenue bonds once the schools have reached their present statutory limits, and that there is no authority for issuing new bonds as outstanding debt is retired under the existing provisions.

S U M M A R Y

Universities authorized to issue tuition revenue bonds under sections 55.17, 55.171 and 55.172 may not issue additional bonds as outstanding bonds are retired.

Very truly yours,



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