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Bob Bullock
Lieutenant Governor of Texas

The Capitol
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December 17, 1991

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Opinion Committee

The Honorable Daniel C. Morales
Attorney General
State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

SUBJECT: Legislation Authorizing Issuance of Revenue Bonds to Finance Construction of General Services Commission ("GSC") State Office Building in Nueces County

Dear General Morales:

The Legislature has authorized the issuance of capital improvement bonds to finance construction in Nueces County. The authorization was incorporated in the General Appropriations Bill, but we are concerned with the appropriateness of such an incorporation. First, we ask whether an appropriations rider may properly authorize the issuance of bonds for a specific project. We then ask whether the rider in question impermissibly conflicts with a general law.

The following rider has been attached to Article V of the General Appropriations Bill, H.B. 1, 72nd Legislature, First Called Session, (1991):

Sec. 125. CAPITAL IMPROVEMENT BONDS. Notwithstanding the limitations prescribed by Article 601d, Section 9, relating to the location of buildings for which bonds may be issued, the Texas Public Finance Authority or its successor may issue revenue bonds under this Act to finance construction by the General Services Commission of a state office building on land owned by the Texas A&M University System in Nueces County, at an estimated cost of \$10,000,000.

Our first question is whether Sec. 125 may properly be authority for the issuance of revenue bonds. We call your attention to the Unity-in-Subject Clause of the Texas Constitution, Article III, Section 35, which states:

No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which monies are appropriated) shall contain more than one subject...

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This Unity-in-Subject Clause has been construed to mean that appropriations is a single subject and that any rider to an appropriations bill must relate to the appropriation of funds. Any rider dealing with a different subject is general legislation and is prohibited by the Unity-in-Subject Clause. Strake v. Court of Appeals, 704 S.W. 2d 745 (Tex. 1986), Op. Tex. Att'y Gen. No. JM-885 (1988).

The General Appropriations Bill, H.B. 1, provides:

Sec. 109. Appropriation of Bond Proceeds. The proceeds from the issuance and sale of bonds or other obligations pursuant to the provisions of Art. 601d and 601d-1, V.T.C.S., are appropriated to the state agency to whose account the proceeds are deposited or credited. Proceeds include interest and investment income.

Proceeds from the issuance of bonds have been appropriated to the Public Finance Authority (the "Authority"). The General Appropriations Bill, therefore, specifically grants the Authority power to expend bond proceeds, but is silent as to the Authority to issue such bonds. In Jessen Associates, Inc. v. Bullock, 531 S.W. 2d 593 (Tex. 1975), the court found that language which authorized the Board of Regents of The University of Texas System to expend bond proceeds to finance specific projects qualified as an appropriation because it set aside funds under certain circumstances. Also, the court in Jessen found that authorization of specific construction projects through an appropriations rider does not violate the Unity-in-Subject Clause limitation. See Jessen at 601.

You may find that revenue bonds may properly be authorized through the Appropriations Rider. However, Section 125 does more than authorize a state agency to issue bonds; it empowers the Authority to finance construction in Nueces County.

Article 601d is known as the Public Finance Authority Act (the "Act"). Section 125 specifically seeks to grant power to the Authority to issue bonds specifically notwithstanding the limitations of Section 9 of the Act. Section 9 of the Act concerns the issuance of bonds in the name of the Authority to finance projects that consist of the acquisition or construction of buildings in Travis County:

Sec. 9(a). The [Public Finance Authority] board may issue and sell bonds in the name of the Authority to finance projects that consist of the acquisition or construction of buildings in Travis County, Texas...

In addition, the Act also states:

Sec. 2. The purpose of this Act is to provide a method of financing: (1) for the acquisition or construction of buildings in Travis County, Texas...

A rider which attempts to alter existing substantive law is a general law which may not be included in an Appropriations Act. Tex. Att'y Gen. Op. JM-885 (1988).

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Our second question is whether the Appropriations Rider may properly authorize bonds to finance construction outside of Travis County.

The Act currently authorizes the financing of construction outside of Travis County. Specifically, Section 24(c) of the Act provides that the Public Finance Authority may issue bonds to finance specific projects in Bexar, Tarrant and Harris Counties.

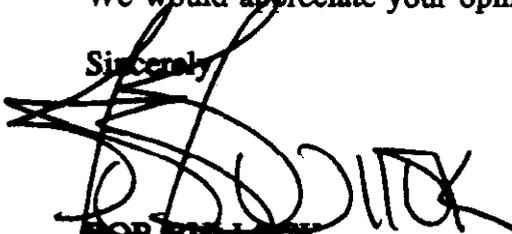
In addition, Section 10(a) (as amended by Act 1989, 71st Leg., Ch. 1244, Sec. 8) of the Act contemplates that projects may be authorized through the General Appropriations Act, providing that:

(a)...before the board may issue and sell bonds, the Legislature by law must have authorized in this Act, the General Appropriations Act, or another Act the specific project for which bonds are to be issued...

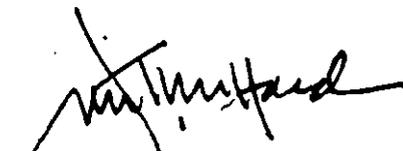
Section 10(a), therefore, contemplates that the General Appropriations Act can authorize specific projects. In some sense, then, the authorization of a project outside of Travis County does not amend or alter an existing law. Rather, authorization (even if it is for a project outside of Travis County) through the Appropriations Act is contemplated by the Public Finance Authority Act.

We would appreciate your opinion on this matter.

Sincerely,



BOB BULLOCK
Lieutenant Governor



JOHN T. MONTFORD
State Senator

BB:JTM:blp

cc: The Honorable Carlos Truan
Business/District and Capitol Offices