



August 17, 1999

Via Facsimile

To All Bond Counsel:

Re: School District Obligations, Other Matters

1. Revised Formulas for Approval of School District Obligations. Attached are revised formulas to be used by this office in determining whether a school district has passed the "50 cent test" under section 45.003(e). (All citations herein are to the Texas Education Code, unless otherwise noted.) Included in the attachment are the revised formulas for contractual obligations and lease purchases. Please note our continuing requirement that a district receiving instructional facilities allotment ("IFA") funds covenant in its bond order to deposit all such funds in the interest and sinking fund, as provided in section 46.009. "Tier 3" or "EDA" funds are also subject to section 46.009, and a similar covenant with respect to those funds will be required to be in the bond order of districts receiving such funds. The formulas for section 45.108 notes (see below) will be the same as those for contractual obligations. Note that Tier 1 funds used to pass the 50 cent test are subject to the same requirements under section 45.003(e) as were previously described for Tier 2 funds in the All Bond Counsel Letter of December 9, 1997, paragraph 2.

2. Approval of Section 45.108 Notes. We have been asked our position regarding the necessity of Attorney General approval of notes issued pursuant to section 45.108. Such notes require Attorney General approval if they are within the definition of bonds under article 717k-8, Tex. Rev. Civ. Stat. Ann., soon to be chapter 1202, Tex. Gov't Code. That is, any notes issued in bearer or registered form and not exempt under section 3.003 of article 717k-8 (section 1202.007 Tex. Gov't Code) must be so approved. It appears the only exception available would be that for a note of less than a one year term. There is nothing in section 45.108 that would exempt long-term notes from the requirement of approval by the Attorney General and registration by the Comptroller pursuant to article 717k-8.

3. Amendments to Section 45.108. As you know, notes issued under section 45.108 may be secured by maintenance taxes upon the effective date of Senate Bill 4. The purposes for which long-term notes may be issued were also expanded by Senate Bill 4. However, notes payable from maintenance taxes may be issued only for purposes for which maintenance taxes may be used. Thus, the construction of school buildings and additions to existing buildings are not purposes for which section 45.108 maintenance tax notes may be issued. Renovation of existing buildings would be an authorized purpose.

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4. Moral Obligation Bonds. There is no statutory authority for a "moral obligation" pledge or covenant on bonds in Texas. Such a pledge or covenant has potential constitutional problems as well. We will not approve any bonds for which the bond resolution, order or ordinance or any other documentation of the financing places or purports to place a moral obligation to pay on the issuer or another governmental entity. See also Attorney General Letter Advisory No. 107 (1975).

5. New Attorneys. Saira Shah joined us in May and Greg Shields returned to the fold in July. Saira is filling the vacancy left by the departure of Lisa Adelman, and Greg replaces Julie Houston who left in May, a week after Saira arrived.

Very truly yours,



Jim Thomassen
Assistant Attorney General
Chief, Public Finance Division

ATTACHMENT 1

August 1999

ABBREVIATIONS

- MTR** = authorized maximum voted maintenance tax rate of the district, as adjusted according to terms of statute pursuant to which such tax was voted. (see note a, below.)
- OMR** = district's most recent maintenance tax rate (excluding the portion of the rate attributable to indebtedness secured by the district's maintenance tax authority).
- BTR** = tax revenue generated by district levying 50¢ tax rate. Equal to $0.50 \times \text{TAV}/100 \times \text{CF}$.
- KOR** = tax revenue generated by district levying tax at a rate equal to district's maximum maintenance tax rate minus district's most recent OMR. Equal to $(\text{MTR}-\text{OMR}) \times \text{TAV}/100 \times \text{CF}$. See note c.
- T1A** = amount of Tier 1 aid (basic allotment as adjusted per subchapter B of Chapter 42, Tex. Educ. Code) that district will receive in the current fiscal year, as demonstrated using the most recent version of the TEA's template for calculating state aid (Tiers 1 and 2), less amounts previously "encumbered." See note d. A copy of the completed template will be required as part of the district's general certificate.
- T3A** = "Tier 3," the amount of state aid that the district will receive in the current fiscal year pursuant to subchapter B of chapter 46, Tex. Educ. Code, as determined by TEA, less amounts previously encumbered. See note e. A copy of the TEA's most recent version of its template for calculating existing debt allotment or equivalent documentation will be required as part of the district's general certificate.
- IFA** = amount of district's Instructional Facilities Allotment (i.e. state aid district will receive pursuant to subchapter A of chapter 46, Tex. Educ. Code), as determined by TEA. (In bond tests, IFA should include only Instructional Facilities Allotment relating to bonds. In lease-purchase tests, IFA should include only Instructional Facilities Allotment relating to lease-purchases.) Evidence of the amount of the allotment must be received in the form of a copy of notification received by the district from TEA.
- T1Δ** = amount of district's anticipated increase in Tier 1 aid over amount received in the immediately preceding fiscal year. An explanation of the reason for the anticipated increase, indicating that the increase is expected to continue in future years, will be required. See note b.
- TEA** = Texas Education Agency
- TAV** = district's taxable assessed valuation.
- CF** = collection factor. (Presumed to be 90%, unless demonstrated to be higher).
- MDS** = maximum debt service on all outstanding bonded indebtedness that is not exempt from the test described in §45.003(e), Tex. Educ. Code.
- KMDS** = maximum debt service on all outstanding indebtedness secured by the district's maintenance tax authority.

MLP = combined maximum lease payment for all lease purchase obligations incurred by the district pursuant to §271.004, Tex. Local Gov't Code.

Notes: a) MTR must be adjusted to account for any limitations imposed by the statute in effect when the tax was approved by voters. (See, e.g., former article 2784e-1, Tex.Rev.Civ.Stat.Ann., which provides for a reduction in the maximum tax rate for maintenance in the event that the district's bonded indebtedness exceeds certain stated limitations.)

b) As a general rule, Tier 1 aid will not be available for use by school districts to demonstrate their ability to pass the contractual obligation test. (Districts are presumed to have used all of their Tier 1 aid for operations and maintenance in prior years. Such funds would not, therefore, be available for contractual obligations.) An exception to this rule will be made when a district is able to demonstrate that it expects to receive an increased amount of Tier 1 aid in the next succeeding fiscal year (and thereafter).

c) All calculations for the contractual obligation test must continue to (i) include a statutory citation to the law pursuant to which the district's maintenance tax was voted along with a copy of the voted proposition and (ii) use the tax rate authorized at such election.

d) Whenever Tier 1 aid is used to pass the lease-purchase test or the bond test, the district must provide certification to the effect that the district has (i) for the bond test, not previously used its Tier 1 aid or Tier 2 aid (to the extent the Tier 2 aid so used exceeds Tier 3 aid) to pass the lease-purchase test or the contractual obligation test, or (ii) for the lease-purchase test, not previously used its Tier 1 or Tier 2 aid (to the extent the Tier 2 aid so used exceeds Tier 3 aid) to pass the bond test or the contractual obligation test. To the extent the district has so previously used its Tier 1 or Tier 2 aid, it must certify as to the amount of Tier 1 or Tier 2 aid "encumbered" by such prior use and deduct the encumbered amount from Tier 1 aid available to meet the requirements of the affected test.

e) Tier 3 aid must also be deducted to the extent it has previously been used to pass the bond test and a certification as to the amount so encumbered must be provided. Note that Tier 3 aid cannot be allocated to bonds for which IFA is received, nor can it be allocated to bonds not exempt under section 45.003(e) in an amount greater than the debt service on those bonds.

TESTS

1. BOND TEST #1 (§ 45.003(e) without state aid):

$$(0.50) \times \text{TAV}/100 \times \text{CF} \geq \text{MDS}$$

2. BOND TEST #2 (§45.003(e) using Tier 1 aid):

$$\text{BTR} + \text{T1A} \geq \text{MDS}$$

3. BOND TEST #3 (§45.003(e) using Instructional Facilities Allotment):

$$\text{BTR} + \text{IFA} \geq \text{MDS}$$

4. BOND TEST #4 (§45.003(e) using a combination of Tier 1 aid and Instructional Facilities Allotment):

$$BTR + T1A + IFA \geq MDS$$

5. BOND TEST #5 (45.003(e) using a combination of Tier 1 aid, Tier 3 aid and Instructional Facilities Allotments

$$BTR + T1A + T3A + IFA \geq MDS$$

6. CONTRACTUAL OBLIGATION TEST #1 (without state aid):

$$(MTR - OMR) \times TAV / 100 \times CF \geq KMDS$$

7. CONTRACTUAL OBLIGATION TEST #2 (using Tier 1 aid):

$$KOR + T1\Delta \geq KMDS$$

8. § 271.004 LEASE-PURCHASE TEST #1 (using Tier 1 aid):

$$T1A \geq MLP$$

9. § 271.004 LEASE-PURCHASE TEST #2 (using a combination of Tier 1 aid and Instructional Facilities Allotment):

$$T1A + IFA \geq MLP$$