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Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 13, 1993

To All Bond Counsel:

Re: School District Obligations and S.B. 826

**School District Obligations**

This office will resume approval on July 16, 1993, of bonds and other obligations (jointly, "obligations") issued by qualified school districts, as hereinafter described, and will continue reviewing and approving such obligations, absent further court action, until August 31, 1993, as provided below. If the court dissolves or further stays the existing injunction by or on such date, it appears that we can continue to approve school obligations unless and until there is an adverse ruling with respect to the constitutionality of S.B. 7, Acts of 73rd Legis., Reg. Sess. (1993) ("S.B. 7"), or until expiration of any further stay.

1. Qualified school districts are districts with a wealth per student that does not exceed the equalized wealth level as determined by the Commissioner of Education (the "Commissioner") pursuant to Chapter 36 of the Education Code (the "Code"), as added by S.B. 7. Non-qualifying school districts may submit obligations for Attorney General approval only after exercising one or more of the options to achieve the equalized wealth level and obtaining approval thereof by the Commissioner and/or district voters, as appropriate, in accordance with Chapter 36.

2. As you are all aware, Section 20.09 of the Code, added and amended by S.B. 351 and H.B. 2885, respectively, Acts of 72nd Legis., Reg. Sess. (1991), mandated that school districts show compliance with certain tax rate limitations for Attorney General approval of school bonds. This requirement has been retained by S.B. 7 although the tests are somewhat different (see paragraph 3 below). As was the case previously, however, once a school district demonstrates the ability to pay bonds within the bond tax rate test (\$.50) and the total tax rate limit (not to exceed \$1.50 unless modified as provided below), a district may levy the tax necessary and in excess of the \$1.50 limit to pay debt service on such bonds without reducing maintenance and operation ("M & O") expenditures. Furthermore, as previously, the tax required to pay debt service on bonds authorized by an election held on or before

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April 1, 1991, and issued before September 1, 1992 ("Exempt Bonds"), is not subject to the \$1.50 limit.

As indicated above, the total school district tax rate limit pursuant to Section 20.09 of the Code, as amended by S.B. 7, is now \$1.50 (or lesser amount previously voted) unless a higher amount has been specifically approved at an election called for such purpose. It is currently our view that a new election authorizing a total tax rate in excess of \$1.50 is required in order to not be subject to this limit; a previous election authorizing unlimited tax bonds is not sufficient for the purposes of exceeding this limit, nor is a previous election which authorized a total combined bond and tax rate in excess of \$1.50. Notwithstanding the higher total tax rate approved at such new election, the tax available for M & O cannot exceed \$1.50 or lesser amount previously voted for such purpose; the amount in excess of the M & O limit is only available for bond debt service.

3. Except for Exempt Bonds (these would now be refunding bonds issued to refund Exempt Bonds), a district must demonstrate compliance with the bond tax test ("Bond Test") and total school district tax rate limit ("Basic Test") set forth in Section 20.09, as amended by S.B. 7, calculated in the manner provided in Attachment I hereto.

4. It is also our view that with respect to contractual obligations payable from M & O tax, the district must show compliance with the Basic Test. Additionally, the district must demonstrate that the amount required to pay (i) the maximum debt service on the obligations being issued and all other obligations payable from M & O tax plus (ii) the amount of the maintenance tax currently being collected for all other M & O purposes does not exceed the amount of M & O tax calculated at a rate equal to \$1.50 or lesser amount voted for M & O purposes ("Contractual Obligation Test"), also calculated in the manner set forth in Attachment I. The general or other certificate must, in addition to the items presently required for the Basic Test and the Bond Test, show the maximum debt service for all outstanding obligations payable from M & O tax, including the proposed obligations and the most recent M & O tax for all other purposes.

Undoubtedly other questions will arise with respect to the approval of school district obligations. We will attempt to deal with them as they arise and keep the bond community informed. Any comments with respect to the above, in particular any thoughts regarding proposition language necessary to exceed the \$1.50 total tax rate limit, would be appreciated.

**S.B. 826**

As you know S.B. 826, Acts of 73rd Legis., Reg. Sess. (1993), amended the Public Property Finance Act, Subchapter A of Chapter 271 of the Local Government Code, so as to authorize school districts to enter into contracts to purchase or otherwise acquire real property or improvement thereto. S.B. 826 also purports to authorize the pledge or use of maintenance tax proceeds in payment of such contracts. This would seem to be contrary to the holding of Madeley v. Trustees of Conroe Independent School District, 130 S.W.2d 929 (Tex. Civ. App., Beaumont 1939, writ dism'd, judgment cor.), as well as raising the issue of violation of the contract with voters as to the use of the maintenance tax for other than maintenance purposes. Please be advised that we will not approve any contracts for the purchase or other acquisition of real property or improvements to real property payable in any manner from school district maintenance taxes without at least the benefit of higher authority.

Regarding other matters, Monty Watson joined us in June, so we are now back to our full complement of seven attorneys. We are still, however, dealing with the backlog resulting from the extremely heavy volume of transcripts received in the last few months. We appreciate your continued patience and willingness to work with us.

Please distribute this letter to all interested members of your firm.

Very truly yours,



Sheela Rai  
Assistant Attorney General  
Chief, Public Finance Section

SR:jhi  
Attachment

ATTACHMENT I

ABBREVIATIONS:

TAX	=	total authorized tax rate (\$1.50 or higher amount voted pursuant to an election held specifically for such purpose under 20.09, as amended)
TAX <sup>M</sup>	=	authorized maintenance tax rate (amount voted, up to \$1.50)
OMR	=	most recent maintenance tax rate exclusive of that required for debt service
MDS	=	maximum annual non-exempt debt service
MDS <sup>K</sup>	=	maximum annual debt service for contractual obligations payable from maintenance tax
CF	=	collection factor*
TV	=	assessed taxable value/100
DPV	=	adjusted taxable value (\$11.86)/100
GL	=	Guaranteed Level funds per weighted student percent of tax effort (§16.302)
WADA	=	Weighted students in Average Daily Attendance (§16.302)
DTR	=	district enrichment and facilities tax rate calculated pursuant to §16.302
CED	=	CED taxes collected from property within the District for preceding year

\*The collection factor is the percentage derived by dividing total taxes (including taxes due from prior years, but not interest and penalties) collected in the prior school year, by the tax levy for the corresponding year. 90% is to be used in the formulas unless the average collection rate for the most recent 3 years is greater than 90%, in which case the average may be used.

TESTS:

BASIC TEST: This test is applicable to all obligations. The actual taxable value, not the adjusted value, is used. The amount of tax authorized is used and the total maintenance tax amount, including the amount of CED taxes collected is added to the maximum debt service. The formula includes an adjustment for the collection rate:

$$\text{TAX} * \text{TV} * \text{CF} \geq \text{MDS} + (\text{OMR} * \text{TV} * \text{CF}) + \text{CED} + \text{MDS}^{\text{K}}$$

CONTRACTUAL OBLIGATION TEST: A school district must show that the maximum debt service on the obligations being issued together with all other obligations payable from M&O tax added to the amount of maintenance tax being collected by the District as well as the CED does not exceed the amount of the district's current-M&O tax.

$$\text{TAX}^{\text{M}} * \text{TV} * \text{CF} \geq \text{MDS}^{\text{K}} + (\text{OMR} * \text{TV} * \text{CF}) + \text{CED}$$

BOND TEST:

$$\$0.50 * TV * CF \geq MDS$$

GUARANTEED YIELD TEST: For Districts that receive state funds pursuant to §16.302(a), the anticipated guaranteed yield amount is added to the total tax rate test. DTR is calculated according to §16.302:

$$(TAX * TV * CF) + (GL * WADA * DTR * 100) - (DTR * DPV) \geq MDS + (OMR * TV * CF) + MDS^K + CED$$

GUARANTEED YIELD BOND TEST: We apply all of the guaranteed yield amount up to \$0.50 to the non-exempt outstanding and proposed bonds in order to determine the projected ability to pay the bonds from a tax rate not exceeding \$0.50. DTR is again calculated according to §16.302, but the amount used in the formula may not exceed \$0.50:

$$(\$0.50 * TV * CF) + (GL * WADA * \underline{DTR}^{\wedge} * 100) - (\underline{DTR}^{\wedge} * DPV) \geq MDS$$

where  $\underline{DTR}^{\wedge} = DTR$  or \$0.50, whichever is less