



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

December 18, 1986

To All Bond Counsel:

Re: BREAKING OF ESCROWS IN REFUNDINGS AND CALLING REFUNDED BONDS

This office has recently received many inquiries about what Texas law permits when refunding occurs, in particular, whether refunded bonds could be called before their maturity date. Under Texas law, they may not.

When bonds are refunded in Texas, the recitals in the refunding orders/resolutions/ordinances, and the refunding statutes provide that the refunded bonds are no longer outstanding for any purpose other than payment of principal at maturity and interest when due. City of McAllen v. Daniel, 211 S.W.2d 944 (Tex. 1948); Article 717k § 7(a). Obviously that means that the provisions of the order/resolution/ordinance which authorized the refunded bonds are defeased, and their security is replaced by the escrow agreement and securities therein pledged to payment of principal and interest on the refunded bonds.

Escrow agreements do not contain provisions for optional redemption or you would never get an accountant's report to support your defeasance opinions. Therefore, once that escrow agreement is signed, the escrow closes, the refunded bonds are non-callable, and the escrow is not broken until all the refunded bonds are retired. Any other approach clearly defeats the firm banking arrangements which permit substitution of the refunding bonds for the refunded bonds.

Please circulate to all your attorneys submitting transcripts to this office.

Very truly yours,

A handwritten signature in cursive script that reads "Susan".

Susan Lee Voss
Section Chief
Public Finance Section

SLV:jh