



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

November 2, 1987

To All Bond Counsel:

Re: Transcript Requirements

The following are various additional clarifications of existing requirements for certain financings reviewed by this office. These requirements will be effective on December 1, unless modified prior to that time. Any comments you may have are welcome.

1. Please recite the specific authority for the issuance of general obligation bonds by home rule cities, including the particular provision or provisions of the home rule charter. (Recitation of authority is a requirement for all bond issues; home rule general obligation issues seems to be the only type of issue where this requirement is frequently not observed.) You need not send a copy of the city charter, unless it has been amended since the previous bond issue, as we have most city charters on file. However, please list the date of the most recent amendment.
2. For financings for which bond insurance is obtained by the issuer, the insurance commitment letter and certified proceedings authorizing and approving the insurance must be included in the transcript. It is acceptable for authorization and approval of bond insurance to be included in the bond resolution/order/ordinance (hereinafter "bond authorization"). In those cases where insurance is obtained by the purchaser of the bonds, only a commitment letter or other evidence that the insurance has been received is required. If a statement of insurance is to be printed on the bonds, this must be provided for by the Issuer in the bond authorization, either in the form of bond or separately. (This provision may be conditional, e.g., "if bond insurance is obtained by the purchaser the Bonds shall bear an appropriate legend as provided by the insurer.") Any insurance legend must also appear on the initial bonds.
3. The letter to all bond counsel dated October 16, 1984 regarding approval of water districts is hereby modified and extended with respect to certain lienholder notice and consent requirements:

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- a. Road utility districts shall also be subject to the requirements of the letter regarding the creation petition.
  - b. In exceptional circumstances, such as when there are a large number of landowners, alternative procedures may be used if prior approval is obtained.

For Article 6702-1 road districts, an additional requirement for approval will be a showing that notice has been given to all fee simple landowners within the district, by registered or certified mail, at least 15 days prior to the hearing provided for in Section 4.416 of Article 6702-1. (This requirement does not, of course, apply where the petition requesting the bond election is signed by all land owners.) Notices must also be sent to lienholders for Article 6702-1 districts, however, in exceptional circumstances alternative procedures may also be used for lienholder notice for this type of district, with prior approval.

4. An appropriation certificate will be required for general obligation bonds and other tax obligations issued after September 1 of any year where a debt service payment is due prior to January 2 of the second succeeding year, and for such bonds issued prior to September 1 of any year where a debt service payment is due that same year. Additionally, in such circumstances, the issuer must certify that there are on hand funds for such payment, or specify the source from which such funds will be available. Alternatively, for tax bonds issued after September 1, the issuer may certify to the effect that a tax rate has not yet been determined for the year in which the bonds are being issued, and that such rate, when determined, will take into account the bonds being issued.
5. Where notice of intent is published in a small-town newspaper, affidavits of publication must include a recitation that the newspaper meets the requirements of Article 28a, Tex. Rev. Civ. Stat. Ann., preferably by reciting the requirements of Article 28a. We do not intend to require changes in the affidavits used by major newspapers, and are willing to consider other methods of ascertaining that Article 28a has been satisfied in those instances where this requirement causes problems.
6. We are willing to pre-review transcripts for unusual or particularly complex financings. We will require, however, that such transcripts be accompanied by the appropriate fee. This does not apply to a review of particular language we may have discussed with you or new language you may be proposing, or to documents you might send to us to help our understanding of a proposed financing.

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7. For refundings where the consideration is a debt-service saving, we will require a showing of the amount of the saving. We do receive this information in most refundings, but certainly not all. This is not for the purpose of second-guessing decisions made by the governing body of the issuer, but is rather to ensure that the issuer has focused on the reasons for the refunding.
  8. Please be sure that your documents reflect the provisions of Title 6 of the Property Code (Unclaimed Property) regarding the disposition of unclaimed principal and interest payments to bond owners. This statute requires that all such monies which are unclaimed after three years be turned over to the State Treasurer, if:
    - a. the owner's last known address, as shown in the records of the registrar, is in Texas, or
    - b. the holder of the unclaimed monies is a Texas governmental entity or a Texas corporation and (i) the owner's identity is unknown or there is no known address for the owner or (ii) the last known address of the owner is in a state whose escheat or unclaimed property law is inapplicable to such monies.

If the last known address of the owner is in another state, the laws of that state control. See Texas v. New Jersey, 379 U.S. 674, 85 S.Ct. 626.

Documents should also require compliance with the reporting requirements of Chapter 74 of the Property Code. Reporting forms and instructions may be obtained from the Texas State Treasurer.

9. Transcripts for bonds issued by an Institution of Higher Education, as that term is defined in Section 61.003(8) Tex. Educ. Code, for construction, repair or rehabilitation projects which must be approved by the Coordinating Board, Texas College and University System (the "Board"), or for bonds the terms of which must be approved by the Board, must include a certified copy of documentation showing preliminary or final approval of such construction, repair or rehabilitation projects, or of the terms of the bonds, as applicable. If Board approval is not required, the transcript must include a certification with respect to the applicable facts, circumstances and legal authority which allow an exception to Board approval.
10. Transcripts submitted for certificates of obligation to be issued for cash and which thereby have a revenue pledge must contain information pertaining to the revenue stream. The fact that the primary security for the obligations is the tax pledge does not eliminate the requirement to provide the revenue

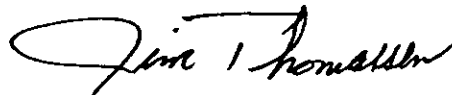
information. A revenue history for the previous three years or similar information showing that the revenue source pledged does produce revenue is sufficient. (A showing of net revenue is not required.)

11. For Revenue obligations the following information is required to be submitted with the transcript:
  - a. A revenue history for the previous three years showing net revenues sufficient to meet debt service requirements,
  - b. Certificate from an engineer or other qualified party showing net revenue projections sufficient to meet debt service without the necessity of a rate increase, or
  - c. A certificate as described in paragraph (b) above based on a rate increase, plus a certified copy of the ordinance putting those rates in effect.
12. Please be reasonably specific in the description of the purpose for which bonds are being issued. We would recommend that the description in the bond authorization be similar in detail to that in the official statement.
13. Refunding transcripts must contain a copy of the bond authorization for the bonds being refunded. For additional parity bonds, a copy of the prior authorization containing the applicable parity bond requirements must be provided. Only one prior bond authorization need be provided, unless differing or additional parity bond requirements are contained in other prior bond authorizations.

If there are any questions or comments regarding these requirements, please feel free to contact me.

Attached, for your information, is a copy of a letter sent in response to questions regarding escrowed-to-maturity bonds. I believe the letter accurately states the position of this office with regard to such bonds. Also, revised rules for the approval of bonds issued by non-profit corporations are expected to be published in the Texas Register by next week.

Sincerely,



James A. Thomassen  
Assistant Attorney General  
Chief, Public Finance Section

JAT:jh  
Attachment



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

October 21, 1987

This is in response to your letter of September 15, 1987 to my predecessor, Susan Voss, regarding "escrowed-to-maturity" municipal bonds.

It is the position of this office that such bonds are not subject to optional calls, even if the issuer attempted to reserve the right to optionally redeem the bonds at some future date. Please note, however, that this position does not apply to mandatory sinking fund redemptions. Mandatory redemptions of the bonds will still take place, in accordance with the terms of the bond issue.

As to the list published in the Texas Bond Reporter, it is my understanding that no absolute assurances can be given that such list is complete. However, as I indicated, it is our position that the listed bonds, other than those with mandatory sinking fund redemptions, are not legally subject to being called prior to maturity.

I hope the above is responsive to your questions. Please do not hesitate to contact me if you feel I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "James A. Thomassen".

James A. Thomassen  
Chief, Public Finance Section  
Assistant Attorney General

JAT:jh