



THE ATTORNEY GENERAL OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

September 7, 1989

To All Bond Counsel:

Re: Financing of Jails and Detention Facilities

The Attorney General's office has received a number of inquiries regarding the financing of jails or detention facilities primarily intended to house prisoners from outside the boundaries of the governmental entity. One such transaction has been closed, with an approving Attorney General opinion, and another is in progress. We understand that several other financings have been closed without Attorney General approval, using the certificate of participation methodology. As of September 1, of course, certificate of participation transactions must also be approved by the Attorney General.

The purpose of this letter is to set out certain of the major criteria which must be met to enable such financings to be approved by this office. I would reiterate that jail financings for a county's own prisoners are not the subject of this letter.

1. It is our position that there is no legal authority to finance facilities for the purpose of housing out of state prisoners. Facilities may be financed for the purpose of housing prisoners from other jurisdictions within the state, and, to a limited extent, federal prisoners. (Federal prisoners must be those arrested in Texas who are awaiting transfer to other facilities or other disposition under applicable federal law.)
2. There must be a demonstration that the project is financially feasible without the incarceration of out of state prisoners. This requirement is based on our belief that without the reasonable expectation that the facility will indeed be used for its intended purpose, there is no public purpose for bonds.
3. A demonstration of feasibility is best done by entering into contracts with other political subdivisions for the housing of their prisoners. Feasibility may possibly also be established by a credible study. However, it may well be that the facilities already financed or under construction have met the existing demand for such facilities. (In this context, demand, rather than need, is the operative word. There may be a "need"

for additional incarceration facilities, but to establish demand there must be a source of funding willing to pay the cost of housing prisoners.) Thus, an acceptable study must show not only a shortage of prison beds in the state, but that there are entities willing to pay an appropriate amount for their prisoners to be housed in someone else's facility.

4. Sufficient disclosure must be made in official statements to ensure that buyers are made aware of the risks. The standard for this is, in our thinking, to the effect that the local government must be protected from any securities law liability if the obligations are not paid.

WE DO NOT THINK IT WILL BE EASY TO MEET THESE CRITERIA. IT MAY NOT BE POSSIBLE AT ALL. PLEASE CONSIDER THIS BEFORE EMBARKING ON SUCH A FINANCING.

Sincerely,



Jim Thomassen
Assistant Attorney General
Chief, Public Finance Section

JT:jh