



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 3, 2020

To All Bond Counsel:

RE: Continued Remote Operation, Transcript Requirements for Internet Posting, School District Ballot Proposition Language, General Obligation Maturity Limitations, and Self-Supporting Debt Designations

This letter addresses continued remote operation, transcript requirements for internet posting, the mandatory ballot proposition language for school district bonds, the certification requirements for general obligation maturity limitations, and the treatment of outstanding tax debt designated as self-supporting in the notice of intent to issue certificates of obligation.

A. Continued Remote Operation

We will continue to operate remotely until further notice. Thank you for your continued support and cooperation during this difficult time.

B. Screenshot Required for Certificate of Internet Posting

When state law requires an internet posting for a notice of election¹ or intent to issue a public security², we will now require the certificate of posting to identify the web address (URL) and attach a screenshot of the posting on the website. Please ensure that the certificate indicates the time period during which the notice was posted on the website.³ In addition to providing a certificate for posting on its own website, issuers must also obtain a certificate and screenshot from the county when the county is required to post the notice on the county's website. The certificate should be executed by the proper officer but does not need to be notarized.

C. School Districts May Not Modify, Supplement, or Qualify the Mandatory Ballot Proposition Statement Required by House Bill 3.

House Bill 3 amended section 45.003 of the Education Code to require school districts to include the following statement in bond propositions on the ballot: "THIS IS A PROPERTY TAX INCREASE."⁴ By using quotations, the Legislature has specified the exact language to be

¹ See, e.g., Tex. Elec. Code § 4.003(b), (f)(3); Tex. Gov't Code § 1251.052(d).

² This includes the notice of intention for certificates of obligation under section 271.049(a)(2) of the Local Government Code.

³ Since the certificate will state the time period for which the notice was posted on the website, a timestamp on the screenshot is not required.

⁴ See section 1.008 of House Bill 3, adding subsection (b-1) to section 45.003, Education Code.

used. Prescribed language is strictly construed; therefore, school districts may not modify, supplement, or qualify this mandatory ballot language.

D. Certification Requirements for Maturity Limitation on General Obligation Bonds Issued by Political Subdivisions

We are seeking input from the bond counsel community regarding reasonable methods for demonstrating compliance with section 1253.002 of the Government Code, enacted by House Bill 440. Section 1253.002(b) limits the authority of political subdivisions⁵ to issue general obligation bonds by imposing the following maturity limitation:

Notwithstanding any other provision of law, a political subdivision may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property, to purchase one or more items of personal property, or to do both, if the weighted average maturity of the issue of bonds exceeds 120% of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds.

We believe that certification evidencing compliance with the above requirement should state the number of years for both the weighted average maturity and the reasonably expected weighted average economic life, and include a basic schedule showing how the issuer determined each amount. A reasonably expected weighted average economic life could be determined according to federal tax law for qualified private activity bonds as a safe harbor⁶, but we recognize that there may be other ways to make this determination after considering the amount of bond proceeds financing personal property as compared to real property improvements.⁷ Therefore, we will consider your legal analysis on reasonable methods to demonstrate compliance with this new state law requirement, which applies to both tax-exempt and taxable bonds. For those wishing to submit legal analysis, we ask that you provide such analysis for our consideration within thirty days from the date of this letter, if possible.

E. Self-Supporting Designation of Public Securities Secured by Ad Valorem Taxes.

House Bill 477 amended the Certificate of Obligation Act to require certain debt obligation information to be included in the notice of intent to issue the certificates. Tex. Loc. Gov't Code § 271.049(b)(4). Section 271.049(e) provides that the term “debt obligation” does not include public securities that are designated as self-supporting by the political subdivision issuing the securities. If the issuer has designated certain tax debt as self-supporting, to evidence the designation and provide clarity, the issuer should identify in the notice the resolution making the self-supporting designation and state in the notice that the self-supporting resolution is

⁵ The term “political subdivision” means a county, municipality, school district, junior college district, other special district, or other subdivision of state government. Tex. Gov't Code § 1253.001.

⁶ See 26 U.S.C. 147(b), and lines 21 and 31 of IRS form 8038, with accompanying instructions.

⁷ Section 1253.002(a) defines “personal property” as having the meaning in section 1.04 of the Texas Tax Code, which means “property that is not real property.” Tex. Tax Code § 1.04(4). As the terms “property” and “real property” are used in section 1.04(4), section 1253.002 effectively incorporates those defined terms as well. See Tex. Tax Code § 1.04(1) – (3) (defining “property”, “real property”, and “improvement”, which is a term used in the definition for “real property”).

available upon request. If the issuer has not adopted a resolution designating the self-supporting tax debt prior to adopting the resolution authorizing notice of the certificate of obligation issuance, the issuer may make the designation in the notice of intent resolution, stating the amount of tax debt along with the title of each issuance.

Please note that section 271.049(b)(4)(C) and (D) requires the notice to state the maximum principal amount of the certificates to be authorized as well as the estimated combined principal and interest required to pay the certificates to be authorized on time and in full. In other words, the issuer may not exclude from the notice any portion of the proposed certificate of obligation debt service. Please also ensure that combined tax debt service schedule submitted for coverage purposes does not exclude any debt designated as self-supporting.

We have provided this letter pursuant to our authority under section 402.044 of the Government Code, which requires that we advise the proper legal authorities in regard to the issuance of bonds that by law require the attorney general's approval. However, please note that this letter does not dictate how a court may rule in an election contest or other legal proceeding.

Sincerely,



Leslie Brock
Assistant Attorney General
Chief, Public Finance Division