



**COUNTY ATTORNEY**

Fort Bend County, Texas

BEN W. "Bud" CHILDERS  
County Attorney

RQ-0305-9C  
RECEIVED  
NOV 07 2000  
OPEN RECORDS DIVISION

(281) 341-4555  
Fax (281) 341-4557

November 3, 2000

Honorable John Cornyn  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

RECEIVED VIA CMRRR # 7000 0520 0022 4455 3142

NOV 07 2000

FILE # ML-41735-00

OPINION

I.D. # 41735

**Re: Request for an Attorney General Opinion as to whether a public funds investment pool may use the "reset date" to calculate their portfolio's weighted average maturity, as opposed to the stated maturity date as dictated by § 2256.016(b)(2) of the Government Code.**

Dear General Cornyn:

Pursuant to the provisions of section 402.043 of the Government Code, I hereby request an Attorney General's opinion regarding floating rate securities and the proper method of reporting "weighted average maturity" ("WAM"). The Fort Bend County Treasurer, Ms. Kathy Hynson, requested this office submit this request to your office for consideration.

As you are aware, the Texas Local Government Investment Pool ("TexPool") is the public funds investment pool for local governments established by the Texas Treasury Safekeeping Trust Company. The state treasurer is authorized to establish the trust company under Chapter 404, Subchapter G of the Government Code to "obtain direct access to services provided by the Federal Reserve System and to enable the treasurer to manage, disburse, transfer, safekeep, and invest funds and securities more efficiently and economically." See Gov't Code §404.102(a).

The County Treasurer has informed me that TexPool has been purchasing "floating rate securities." Essentially, TexPool purchases the securities at a time when the rates are low. As the rates increase, the coupon paid on the security also increases. The propriety of this procedure is not in question, however the manner in which TexPool uses the reset date to compute the weighted average maturity ("WAM") is in question.

Securities normally do not float continuously but instead are compared to and change in value at set intervals against their index. That scheduled point in time is called a "reset date." The reset date is dependent upon the type of index as well as the schedule. A T-Bill might reset once a week when the Bill is auctioned or a prime floater may reset only once a quarter; some floaters reset daily. There is no established schedule. As a result, the floater security has two (2)

dates important to the investor: the reset date and the maturity date. At the reset date, the security can change the coupon. At the floater's stated (final) maturity date it will mature.

Pursuant to section 2256.016(b)(2) of the Government Code, also known as the Public Funds Investment Act ("PFIA"), governmental entities must use the stated maturity date of the investment to calculate the weighted average maturity ("WAM"). Section 2256.016(b)(2) reads as follows:

"(b) To be eligible to receive funds from and invest funds on behalf of an entity under this chapter, an investment pool must furnish to the investment officer or other authorized representative of the entity an offering circular or other similar disclosure instrument that contains, at a minimum, the following information:

- (1) the types of investments in which money is allowed to be invested;
- (2) the maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool;
- (3) the maximum stated maturity date any investment security within the portfolio has;"

The PFIA requires all public entities in Texas to establish and include in their investment policies a maximum weighted average maturity ("WAM") to calculate their own portfolio's weighted average maturity ("WAM") based upon the final maturity of every security. However, I have been informed by Ms. Hynson that TexPool is currently using the reset date (the date of the rate increases) of the floating rate security to calculate the weighted average maturity ("WAM"), as opposed to the stated maturity date of the investment as dictated by § 2256.016(b)(2) above.

Texpool's usage of the "reset date" is based upon the authority to do so under the Securities and Exchange Commission provision for Section 2a-7 funds. *See* 17 CFR 270.2a-7. Under the PFIA, Texas pools are not governed by the Securities and Exchange Commission and Section 2a-7 regulations should not be considered when calculating the weighted average maturity "WAM".

The questions, then, which are presented and for which an Attorney General Opinion is requested, are these:

1. May a public funds investment pool use the "reset date" to calculate their portfolio's weighted average maturity ("WAM"), as opposed to the stated maturity date as dictated by § 2256.016(b)(2) of the Government Code?

Honorable John Cornyn  
November 3, 2000  
Page 3


2. If it is determined that a public funds investment pool may use the "reset date" to calculate their portfolio's weighted average maturity, should the pool additionally disclose the weighted average maturity ("WAM") based on the stated maturity?
3. What recourse, if any, does a public entity in Texas have against a public funds investment pool who inaccurately calculates its weighted average maturity ("WAM")?

At your earliest convenience, please provide this office with an answer to the above three (3) questions. For your convenience, attached is a copy of the 'Public Funds Investment Act' and Title 17 CFR 270.2a-7.

Your consideration and guidance is greatly appreciated.

Sincerely,

BEN W. "BUD" CHILDERS  
COUNTY ATTORNEY

By:   
Mary E. Reveles,  
Assistant County Attorney

Enclosure

cc: Honorable James C. Adolphus, County Judge  
Honorable R.L. "Bud" O'Shieles, Commissioner Pct. 1  
Honorable Grady Prestage, Commissioner Pct. 2  
Honorable Andy Meyers, Commissioner Pct. 3  
Honorable James Patterson, Commissioner Pct. 4  
Honorable Dianne Wilson, County Clerk  
Honorable Kathy Hynson, County Treasurer  
Honorable Marsha P. Gaines, Tax Assessor/Collector  
Robert Ed Sturdivant, County Auditor

MER:Treasurer AG request.1152(110300)