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GENERAL COUNSEL OPINION COMMITTEE



Texas State
Technical College
System

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RQ-0493-AC

January 11, 2002

VIA POSTAL SERVICE

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78701
Attention: Opinion Committee

FILE # ML-42371-02
I.D. # 42371

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

—SG

Re: Effect of recently passed 77(R) House Bill 2153
Whether TPFA may issue bonds for TSTC

Dear General Cornyn:

We present this request for an opinion on behalf of Texas State Technical College (TSTC).

The recently passed HB 2153, relating to the directors and authority of the Texas Public Finance Authority (TPFA), has amended the pertinent part of the Texas Government Code to read as follows:

- 1-23 SECTION 4. Section 1232.101, Government Code, is amended to
- 1-24 read as follows:
- 2-1 Sec. 1232.101. ISSUANCE OF BONDS FOR CERTAIN STATE AGENCIES.
- 2-2 [(a)] With respect to all bonds authorized to be issued by the
- 2-3 Texas Military Facilities Commission, Texas National Research
- 2-4 Laboratory Commission, Parks and Wildlife Department, Texas
- 2-5 Low-Level Radioactive Waste Disposal Authority, Stephen F. Austin
- 2-6 State University, Midwestern State University, and Texas Southern
- 2-7 University [and each institution of higher education authorized to
- 2-8 issue bonds under Chapter 55, Education Code], the authority has
- 2-9 the exclusive authority to act on behalf of those entities in
- 2-10 issuing bonds on their behalf. In connection with those issuances
- 2-11 and with the issuance of refunding bonds on behalf of those
- 2-12 entities, the authority is subject to all rights, duties, and
- 2-13 conditions surrounding issuance previously applicable to the
- 2-14 issuing entity under the statute authorizing the issuance. A
- 2-15 reference in an authorizing statute to the entity on whose behalf
- 2-16 the bonds are being issued applies equally to the authority in its
- 2-17 capacity as issuer on behalf of the entity.
- 2-18

2-18 ~~[(b) Subsection (a) does not apply to:]~~
2-19 ~~[(1) The University of Texas System, The Texas A&M~~
2-20 ~~University System, or a component of those systems;]~~
2-21 ~~[(2) an institution of higher education authorized to~~
2-22 ~~issue bonds under Section 17, Article VII, Texas Constitution; or]~~
2-23 ~~[(3) bonds authorized to be issued by a system,~~
2-24 ~~component, or institution described by Subdivision (1) or (2).]~~
2-25 ~~[(c) Notwithstanding any other provision of this section,~~
2-26 ~~with respect to all bonds authorized to be issued by Midwestern~~
2-27 ~~State University, Stephen F. Austin State University, or Texas~~
3-1 ~~Southern University, the authority has the exclusive authority to~~
3-2 ~~act on behalf of those institutions in issuing bonds on their~~
3-3 ~~behalf. In connection with those issuances and with the issuance~~
3-4 ~~of refunding bonds on behalf of those institutions, the authority~~
3-5 ~~is subject to all rights, duties, and conditions surrounding~~
3-6 ~~issuance previously applicable to the issuing institution under the~~
3-7 ~~statute authorizing the issuance. All references in an authorizing~~
3-8 ~~statute to the institution on whose behalf the bonds are being~~
3-9 ~~issued apply equally to the authority in its capacity as issuer on~~
3-10 ~~behalf of the institution.]~~

Question Presented:

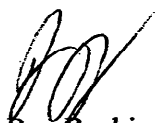
The deletion of “and each institution of higher education authorized to issue bonds under Chapter 55, Education Code” in lines 2-7 – 2-8 has the potential meaning that TPFA may no longer issue bonds for TSTC.

However, the subsequent language in line 2-8 relating to “exclusive authority” seems to indicate that institutions of higher education authorized to issue bonds under Chapter 55 of the Texas Education Code are merely not limited to having TPFA as the *exclusive* body that may issue bonds on their behalf.

Do the amendments of HB 2153 to section 1232.101 of the Texas Government Code now make it impermissible for TPFA to issue bonds on behalf of TSTC?

If you have any questions concerning this request, please contact us at the above address and phone number. We look forward to the forthcoming opinion on this issue under the mandate of Texas Government Code section 402.042. Thank you for your attention to this matter.

Sincerely,



Ray Rushing
General Counsel
Texas State Technical College

RR/vt