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OPINION COMMITTEE

THSA



TEXAS HEALTH SERVICES AUTHORITY

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September 19, 2016

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

The Honorable Ken Paxton  
Office of the Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Attn: Opinion Committee

Re: Request for Opinion on Applicability of the Public Funds Investment Act, Texas Government Code, Title 10, Chapter 2256

Dear General Paxton:

I am writing to request an opinion regarding the applicability of the Public Funds Investment Act (PFIA), Texas Government Code, Title 10, Chapter 2256 to funds received by the Texas Health Services Authority (THSA) under Senate Bill 1367 (83R). PFIA's definition of the term "funds" includes the term "public funds," which is not itself defined. See Texas Government Code (hereinafter Tex. Gov. Code) 2256.002 for the definitions section of PFIA.

**BACKGROUND**

**The Texas Health Services Authority**

The Texas Health Services Authority (THSA) is defined in Texas Health and Safety Code Chapter 182 as a public-private partnership, legally structured as a nonprofit corporation, to support the improvement of the Texas health care system by promoting and coordinating health information exchange (HIE) and health information technology (HIT) throughout the state that will ensure the right information is available to the right health care providers at the right times. The THSA has a 12-member Board of Directors appointed by the Governor with advice and consent of the Texas Senate. The Board's CEO and staff oversee the THSA's daily operations.

**Senate Bill 1367 and Transfer of Funds**

In 2013, the 83<sup>rd</sup> Legislature, during its Regular Session, passed Senate Bill (SB) 1367 abolishing the Texas Health Insurance Pool (THIP). Due to changes in federal law, the Legislature determined that the THIP was no longer needed and that a dissolution plan should be developed and implemented. See Bill Analysis, SB 1367, Enrolled Version, <http://www.capitol.state.tx.us/tlodocs/83R/analysis/html/SB01367F.htm>. Under Section 6(e)(1) of SB 1367, \$5 million was to be sent to the THSA if it was deemed no longer necessary to meet the obligations of the THIP in its wind down.

The THSA received the funds transfer from the THIP on September 12, 2013.

According to the THIP: "The Pool receives no state funding. The Pool's statute, Ch. 1506 of the Texas Insurance Code, requires Pool premium rates to be set at twice the rates charged in the commercial insurance market. Even with higher premium rates, the premiums paid by Pool members are not enough to cover the medical and pharmacy claims the Pool pays for its members. The additional funding is provided by health insurance companies in Texas who, by state law, are required to cover the Pool's net loss. This assessment on health insurers is allocated among the companies based on their share of the Texas health insurance market. In 2012, for example, the Pool assessed health insurers \$165,000,000." See FAQ #1, <http://www.txhealthpool.org/faq.html>.

### The Public Funds Investment Act

The Public Funds Investment Act (PFIA) is codified in Texas Government Code, Title 10, Chapter 2256. PFIA governs the investment of funds by certain governmental entities, including state agencies such as the THSA. The term "funds" is defined in Tex. Gov. Code §2256.022(3) as: "public funds in the custody of a state agency or local government that: (A) are not required by law to be deposited in the state treasury; and (B) the investing entity has authority to invest." There is no definition in PFIA, either the version codified in Texas or any version we were able to find, of "public funds" nor were we able to find a previous Attorney General Opinion addressing the question raised herein.

According to both the Law Dictionary and the Business Dictionary, public funds are: "money generated by the government to provide goods and services to the public in general." See <http://thelawdictionary.org/public-funds/> and <http://www.businessdictionary.com/definition/public-funds.html>.

### QUESTION

At issue here is whether the funds received by the THSA from the THIP under SB 1367 (83R) are "public funds." The THSA is working on updating its investment policy, and we want to ensure that any funds invested are done so prudently and in accordance with all relevant law and best practices. In order to fully reach this goal, we need your opinion on whether the \$5 million received are public funds and therefore, subject to the PFIA.

Were the money from taxes and/or from general revenue, the issue would be straightforward, even in absence of the relevant definition. This is not the case, however, with these funds. The funds held by THIP came from premium rates and from health insurance companies, not from taxes or general revenue, and the money came to the THSA through a transfer directly from the THIP; the money was not sent to general revenue first. Additionally, the THIP stated on its website that it received "no state funding," which suggests that these funds were not considered public funds when they were with the THIP.

I appreciate your consideration of this issue. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,



David Fleeger, M.D.  
Chair, Board of Directors  
Texas Health Services Authority