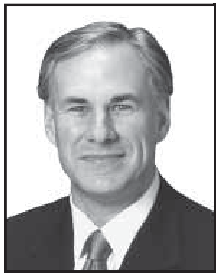

THE BOND REVIEW PROCESS

by Texas Attorney General Greg Abbott

AS THE CHIEF LEGAL OFFICER FOR the State of Texas, the Attorney General has a number of formal legal duties and responsibilities, including representing state agencies in court, issuing legal opinions, ensuring that government information is accessible to the public, and approving state and local government-issued bonds.

Bonds, a type of debt security, are essentially a method by which governmental and corporate entities issue debt. When a governmental entity seeking financing for a public project opts to fund the initiative by borrowing money from private sources, it does so by selling bonds. The bondholders are essentially creditors, while the issuing governmental entity is a debtor that promises to repay both the principal debt and a specified amount of interest.

While the bond process doesn't usually generate headlines, it is a crucial function of government and a process that benefits every Texan. Governmental entities may use bonds to pay for a variety of purposes, ranging from water infrastructure projects to road construction and other public works. Bonds also may be issued to build or repair public school buildings – from public elementary schools to public universities. In recent years, voters have elected to use bond money to finance sports facilities, including Minute Maid Park in Houston, the American Airlines Center in Dallas and the AT&T Center in San Antonio.

As the Texas population and economy grows, the number of bonds issued by governmental entities continues to rise. During recent record-breaking years, the Office of the Attorney General (OAG) received as many as 1,600 bond transcripts – and approved up to $53 billion worth of bonds – in a single year.

Among the governmental entities authorized to issue bonds are cities, counties, school districts, municipal utility districts, hospital districts, institutions of higher education, certain state agencies, and nonprofit organizations created to act on a governmental entity's behalf. In most circumstances, bonds payable from ad valorem taxes are issued only after a public entity's governing board elects to hold a bond election; the voting public approves the proposed bond package; and the governing body elects to issue the bonds. This process gives local elected leaders an opportunity to designate how the bond proceeds will be used and permits taxpayers to accept or reject the proposed debt issuance.

Once bonds have been approved, the entity planning to issue bonds must submit certain documentation to the OAG. The bonds cannot be issued until the OAG has completed a thorough legal review. This process ensures that the debt securities comply with the state's laws and Constitution.

The OAG's Public Finance Division is responsible for bond review and approval. Bonds and similar obligations must be submitted together with evidence proving that valid proceedings authorized the bonds' issuance (for example, certified election results). The completed package is called a bond transcript.

Many bond transcripts require a simple, straightforward legal review. More complicated financing structures, however, such as sports facilities, economic development projects, health facilities and lease-purchase agreements, require a more complex and lengthier review process.

The Public Finance Division's review and approval role is based entirely on legal validity. Because the Office of the Attorney is not a legislative body or a financial institution, its review process is limited to strictly legal issues. The entity issuing bonds makes the policy decision to authorize the debt, the law limits OAG's role in the process. The wisdom of a financing method or the advisability of a particular project generally lies outside the OAG's statutory review authority.

From time to time, legal problems are discovered after the governmental body delivers the bond transcript to the OAG. Some issues are resolved through remedial action by the issuer. However, consistent with its statutory obligation to review proposed bonds for compliance with the law, the Public Finance Division must refuse to approve bonds which are defective if the legal problem cannot be cured.

If the OAG determines that the proposed bonds have been authorized in accordance with law, the agency approves the transcript and sends the bonds to the Comptroller of Public Accounts for registration. Bonds that receive OAG approval are deemed legally valid, enforceable and incontestable in any court for any reason (unless they are constitutionally defective).

Once the bonds are registered by the Comptroller, the issuer can deliver bonds to the purchasers in exchange for the purchase price. The purchaser is usually a bond underwriter, such as an investment bank, that agrees to purchase all the debt securities issued by the governmental body. The purchaser usually sells the debt on the open market. There, public bonds are bought, sold and traded by private purchasers, who earn interest payments until the governmental entity pays off its debt.

The Public Finance Division also serves as legal counsel to the Bond Review Board, the state agency responsible for ensuring that bond proceeds are used prudently. Under Texas law, the Board is also charged with securing the highest possible ratings for state-issued bonds. With high ratings, bonds receive more favorable interest rates and therefore save valuable taxpayer dollars.

By carefully and thoroughly performing its statutory obligation to review and approve state and local government bonds, the OAG protects taxpayers resources and assures bond purchasers they are buying a legally valid public security.

For bond counsel letters and additional information on the bond review process, visit the OAG online at **www.texasattorneygeneral.gov.**