



**THE ATTORNEY GENERAL  
OF TEXAS**

July 25, 1990

**JIM MATTON  
ATTORNEY GENERAL**

To All Bond Counsel:

Re: Resolution Funding Corporation Bonds, Other Matters

1. The Public Finance Section will approve refunding bond financings pursuant to Article 717k, where the proceeds of the refunding bonds are invested in obligations consisting of the interest component of Resolution Funding Corporation bonds. It is the position of the Public Finance Section that the interest component of Resolution Funding Corporation bonds meets the requirements of Article 717k, as an obligation unconditionally guaranteed by the United States. We do not, of course, take any position as to the fiscal appropriateness of the use of such obligations in any particular situation.

2. We will continue to review refundings with no present value debt service savings on a case by case basis, and will require additional information to be submitted. The additional information required will normally consist of debt service schedules with and without the refunding, and an explanation of why the governing body believes such refunding to be needed. Please note that we now have an additional requirement for such refundings. For refundings for which there is a present value loss, the dollar amount of such loss, and the dollar amount of any gross loss, must be set out in the recitals to the bond resolution, order or ordinance. This should be done in such a manner to make clear that the governing body has taken into account the negative aspects of the financing in making its determination to issue the obligations. In general, we believe that the decision to undertake such refundings is within the discretion of the governing body, absent an abuse of that discretion.

3. Regarding the approval of tax anticipation notes by the Attorney General's Office, it is our position that what we understand to be "traditional" TAWs need not have Attorney General approval. Our position is based on interpreting Article 717k-8, Section 3.003(a)(1)(A) to exempt bonds that are "payable only out of

current revenues or taxes collected for [instead of in] the year of issuance of the bond." That is, notes issued in calendar year 1990, payable in the spring of 1991, are payable from taxes collected for 1990, and thus exempt from Attorney General approval. Of course, any governmental entity must still have the specific authority to issue tax anticipation notes. (Presumably, with the appropriate legal authority, for example, Section 54.304 of the Water Code, it would be possible to issue TANs in November or December of 1990 which would be payable in the spring of 1992. [It appears that such obligations would still require Attorney General approval]) This interpretation of Article 717k-8 appears to comport with legislative intent, while reading the cited section literally does not lead to a sensible result. Additionally, this interpretation supercedes the position taken in item 13 of the December 13, 1988 All Bond Counsel letter, which indicated that the year in Section 3.003(a)(1)(A) would be taken to mean fiscal year.

Sincerely,



Jim Thomassen  
Assistant Attorney General  
Chief, Public Finance Section

JT:jh

9/1990

1991  
JAT