

Municipal Finance: The Public Purpose Doctrine and the Basics of Borrowing, Depositories, and Investments

The Fourteenth Annual Riley Fletcher Basic Municipal Law Seminar
Austin, Texas
Thursday, February 21, 2013

Kuruvilla (K.O.) Oommen
Deputy City Attorney
City of Irving, Texas

Overview

1. Public Purpose Doctrine
2. Municipal Borrowing
3. Municipal Depositories
4. Municipal Investments

Public Purpose Doctrine: Applicable Law

- Texas Constitution Art. 3, §52
 - “[T]he legislature shall have no power to authorize any county, city, town or other political subdivision of the state to lend its credit or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever. . . .”
- Texas Constitution Art. 11, §3
 - “No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; . . .”

3

Public Purpose Doctrine: Overview

- Purpose of Constitutional Restrictions
- Incidental Benefit of a Private Interest
- Three-Part Public Purpose Test
 1. Predominate purpose
 2. Public control over funds
 3. Political subdivision receives a return benefit
- Legislative Determination
- Examples

4

Municipal Borrowing: Authority

- Texas Constitution Art. 11, § 5 and 7
 - Generally, levy and collect tax to pay interest and create a sinking fund of at least two per cent to repay principal
 - A “sinking fund” is a fund into which moneys are placed to be used to redeem securities in accordance with a redemption schedule in a bond contract.
 - Remember, constitutional and statutory limits on a city’s power to tax; additional taxes for bonds plus other taxes may not exceed these restrictions
 - Recent exception: 2011 Amendments authorize cities and counties to enter multi-year Interlocal Agreements

5

Municipal Borrowing: Authority

- Texas Constitution Art. 3, § 52
 - City must have specific authority to issue bonds for a specific purpose
 - Legislature has authority to allow cities to issue bonds
- Texas Supreme Court: *McNeill v. City of Waco*
 - Defines “debt”
 - Exceptions:
 1. Current revenue
 2. Special funds

6

Municipal Borrowing: Authority

- Authority derived from:
 - Constitution
 - Statutes
 - Texas Government Code §1331.052
 - General authority for home rule cities
 - Permanent public improvements
 - Other public purposes authorized by charter and consistent with constitution
 - Additional Statutory Authority
 - Home Rule Charter

7

Municipal Borrowing: Bonds

- Definition: A promise by a local governments (issuers) to lenders of money (investors) to repay that money (principal) along with interest, by a certain date (maturity)

8

Types of Debt: General Obligation Debt

- **General Obligation Bonds**
 - Statute: Texas Government Code, § 1331.052
 - Backed by ad valorem taxes
 - Authorized by municipal bond election
 - Used for permanent public improvements and other public purposes as provided by statute and city charter
- **Certificates of Obligation (CO)**
 - Statute: Texas Local Government Code, Ch. 271
 - Supported by ad valorem taxes, revenues or both
 - Election is **not** required (unless a petition is received)
 - May be used to pay for: public improvements, professional services, demolition of substandard structure, restoration of historic structures
- **Time Warrants**

9

Types of Debt: Revenue Bonds

- Authority from various statutes according to the type of project
- Not secured by a pledge of property taxes
- No bond election required (unless city charter requires)
- Revenue stream is pledged to finance a revenue-producing asset

10

Other Types of Debt

- **Refunding Bonds**
 - Statute: Texas Government Code, Ch. 1207
 - A pledge of ad valorem taxes, revenue or both unless limited by applicable statute
 - Bond election is **not** required
 - May be used to refinance short-term or long-term debt, or other obligation
- **Judgment Bonds**
 - Statute: Texas Government Code, §157.001
 - Bond election is required
 - Pursuant to Texas Government Code, Ch. 1207, can refund an obligation to pay pursuant to a court judgment without an election.
 - Issued to pay final judgments against a city if money is not available to pay the judgment

11

Other Types of Debt

- **Lease-Purchase Agreements**
 - Texas Local Government Code, § 271.005
 - Used to finance the purchase of personal property
- **Anticipation Notes**
 - Texas Government Code, Ch. 1431
 - Issued to borrow against anticipated revenue, typically federal grant money
- **Tax Note**
 - Texas Government Code, §1202.003
 - Tool for alleviating short-term cash flow needs

12

Municipal Borrowing: Role of Attorney General

- **Statute:** Texas Government Code, Chapter 1202
- **Generally**
 - Submission of the public security and the record of authorization proceedings to the Attorney General for review and approval
 - A public security cannot be issued if it is not approved by the Attorney General
 - After approval, registration by the comptroller, and issuance, public security is incontestable, except for claim of unconstitutionality

13

Municipal Borrowing: Other Roles

- **Bond Counsel** – prepares documents, submits the bonds to the Attorney General for approval, ensures compliance with state and federal law; provides a bond opinion regarding validity and tax-exemption
- **Financial Advisor** – works with the issuer to structure bond financing; works with the Underwriters to price and sell the bonds; assists issuer in preparation of Official Statement
- **Underwriters** – purchase all of an issuer’s bonds and resells the bonds in the market to investors
- **Finance Director** – understands financial restraints of city and debt capacity (ability to sell debt and cover debt service within tax or revenue constraints); tracks bond election authority and bond proceeds expenditures; budgets adequate interest and sinking fund to pay debt service

14

Municipal Borrowing: Bond Proceeds

- Bond proceeds can only be spent for the purposes for which they were issued:
 - Capital expenditures
 - Election proposition restrictions
 - Purpose clauses
- Expenditures must be tracked for continuing compliance with federal tax law

15

Municipal Depositories

- **Statutes**
 - Local Gov't Code, Chapters 105 and 131
 - Gov't Code, Chapter 2257
- **Resources (tml.org)**
 - Sample Depository Services Agreement
(http://www.tml.org/legal_pdf/depository_agreement.pdf)
 - Sample RFP for Banking Services
(http://www.tml.org/legal_pdf/Depository_RFP.pdf)

16

Municipal Depositories: Requirements

- City Council must designate bank, credit union, or savings association that will serve as the depository for municipal funds
- Designated officer
- Institutions not located in city
- Depository services agreement
- Conflicts of interest
- Special depository

17

Municipal Investments

- **Statute:** Public Funds Investment Act (“PFIA”) (Gov’t Code, Chapter 2256)
- **Resources:**
 - UNT Center for Public Management document relating to HB 2226
(<http://pacs.unt.edu/cpm/sites/default/files/2011%20PFIA%20Legislative%20Changes.pdf>)
 - Example Policy
([http://www.texascityattorneys.org/2012speakerpapers/rileyfletcher/FinancePresentationHandout-CityofIrvingInvestmentPolicy\(2012\)Handout.pdf](http://www.texascityattorneys.org/2012speakerpapers/rileyfletcher/FinancePresentationHandout-CityofIrvingInvestmentPolicy(2012)Handout.pdf))

18

Municipal Investments: Requirements

- City must comply with Public Funds Investment Act (PFIA) to invest public funds
- PFIA:
 - Written investment policy
 - Include list of authorized investments
 - Only invest in authorized list
 - City official must complete training regarding PFIA
- No penalty provision, but may impact credit ratings or result in negative comments in an audit

19

Questions?

20