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September 19, 2001

To the Superintendents of Texas Public Schools

Re: Lease-Purchase Financing of School Buildings

Dear Superintendent:

You are probably aware that all bonds and most notes issued by school districts must be approved by the Attorney General. You may also know that lease-purchase financings of school buildings must also be approved by the Attorney General. Understandably, some of you may not be aware of the latter requirement if your district has not been involved in a lease-purchase financing of a school building (which can be undertaken only by those districts with Tier 1 funds available for lease payments). There appear to be some school finance attorneys and financial advisors who are unaware of the requirement as well. We will, in the near future, distribute a letter "To All Bond Counsel" to remind those lawyers who practice in the bond and lease-purchase financing areas of this requirement and to ask them to advise or remind financial advisors they work with of the requirement. However, since this is a matter within your area of responsibility, we felt it would be good policy to contact you directly. We wanted to be sure you knew that a plan to borrow money to construct or acquire a school building, including through a lease-purchase agreement, is required to be submitted to the Attorney General for approval.

If your school district is eligible and is considering a lease-purchase financing of a school building, please be sure that the professionals you engage to structure the financing are familiar with the process of obtaining Attorney General approval and intend to obtain the approval before funding the lease-purchase agreement. We recommend that you ask for evidence that a transcript of proceedings for the financing has been submitted to the Attorney General and that approval has been obtained, unless you are otherwise confident that this has been done.

Personal property, such as vehicles, maintenance equipment and computers, may be financed through a vendor or by a lease-purchase agreement without Attorney General approval of the financing. However, building materials or components, such as windows, doors, flooring, plumbing fixtures, etc., are not personal property when assembled into a building and defining them to be personal property in an agreement does not make them so. Thus, please note that if the proceeds from a lease-purchase or other financing agreement purport to be financing building materials and components which will be assembled into a school building, the agreement does not comply with law. By confirming that agreements for financing school buildings are submitted to the Attorney General, you ensure that your district does not enter into one of these agreements.

If your district has financed a school building through a lease-purchase agreement not approved by the Attorney General, no action need be taken by your district at this time. (It appears that once the building has been built and is opened for use, taxpayers in the district do not have standing to challenge the agreement.) However, should your district want or need to refinance the agreement, problems would arise because of the failure to have the agreement approved by the Attorney General. If it provides for, or can be amended to provide for, prepayment or refinancing, a lawful lease-purchase agreement may be refinanced if appropriate procedures are followed and an election for that purpose is held and passed. However, if the agreements were not legally entered into, ordinarily they would not be eligible for refinancing.

To avoid hardship to school districts that entered into illegal agreements without knowing they were not following legal requirements, we have decided to, in effect, "grandfather" such agreements and are willing to approve bonds to refinance lease-purchase agreements entered into prior to the distribution of this letter if the district has a successful election to authorize that purpose (and if the agreement provides for or can be amended to provide for refinancing or prepayment). There are special procedures for doing this and you should consult your financial advisor or bond counsel if your district wants or needs to refinance such a lease-purchase or similar agreement. *Please note that any lease-purchase agreements to finance school buildings entered into without Attorney General approval after the distribution of this letter will not be eligible to be refinanced, even if an election is held.*

Your first step, if your school district wants to refinance a school building lease-purchase agreement it entered into without Attorney General approval, is to contact a reputable financial advisor or bond counsel. You may also want to contact representatives of school organizations to which you or your board belong, such as the Texas Association of School Administrators or the Texas Association of School Boards. The Texas Education Agency is another resource for information in this area.

Thank you for your attention to this matter and your cooperation. If you have questions, please do not hesitate to call Jim Thomassen, Division Chief of the Public Finance Division of the Office of the Attorney General at (512) 475-0489.

Sincerely,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive style with a large initial "J" and "C".

John Cornyn
Attorney General of Texas

JC:nf