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The Roles of Legal Counsel in Municipal Finance Transactions

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Sam M. Gill
Partner
McCall, Parkhurst & Horton L.L.P.
Dallas, Texas, USA

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THE ROLES OF LEGAL COUNSEL IN MUNICIPAL FINANCE TRANSACTIONS

The discussion below is designed to provide a general overview of some of the customary roles of legal counsel in municipal finance transactions in the United States. This paper includes a general summary of some of the responsibilities of legal counsel in municipal finance transactions as well as the general substance and content of the various legal opinions customarily provided by such professionals in each respective role.

A. Overview of Municipal Finance Transactions

A municipal finance transaction consists of lawyers, bankers and other financial professionals working to navigate the process by which an issuer of municipal debt seeks to raise money via the issuance of bonds or other debt obligations to finance authorized projects and expenditures. Issuers of municipal bonds include states, cities, counties, school districts, colleges, universities, state agencies, authorities, political subdivisions and other special purpose districts and municipal corporations.

A municipal bond is a financial instrument that evidences a debt obligation which the issuer promises to repay over time. Municipal bonds are issued for numerous purposes including the construction, reconstruction and acquisition of roads, streets, bridges, parks, schools, police and fire department facilities and equipment, libraries, water treatment plants, water, sewer and electrical utility systems, facilities for higher education, affordable housing facilities, hospitals and many other infrastructure projects. Municipal bonds are also issued to restructure and refinance outstanding municipal bonds and other debt obligations of an issuer.

The two main categories of municipal bonds issued in the United States are general obligation bonds and revenue bonds. General obligation bonds are bonds that are secured by the full faith and credit and taxing power of the issuer and are payable from ad valorem property taxes levied and assessed on all taxable property within the area served by the issuer. General obligation bonds are often referred to as "voted bonds" or "tax bonds" because in most jurisdictions an election is required at which voters must approve the issuance of bonds and the levy and assessment of property taxes to pay for the bonds prior to the issuance of such bonds. The issuance of general obligation bonds is often limited by state constitutions and local statutes which contain debt limitation provisions designed to protect taxpayers from paying excessive property taxes.

Revenue bonds are generally secured by the revenues generated by the underlying project or facility being financed. For example, parking facility revenue bonds are customarily payable from revenues generated by the parking fees of a parking garage and water and sewer revenue bonds are generally secured by the water and sewer rates paid by customers of a joint utility system. Revenue bonds may also be secured by other revenue streams available to an issuer such as sales taxes, user fees, lease payments and license fees. Revenue bonds are regularly issued to finance water, sewer and electric utility system

improvements, housing projects, healthcare facilities, hotels, stadiums and parking facilities. Additionally, transportation projects are often financed with revenue bonds secured by user fees, toll fees, motor vehicle taxes, motor fuels taxes, airport revenues and other transportation fees and taxes. While revenue bonds are not subject to constitutional and statutory debt limits and generally do not require voter approval, such bonds are subject to certain restrictive covenants which are designed to provide protection for bondholders. Some common revenue bond covenants include: rate covenants which provide that the issuer will maintain rates and charges sufficient to generate revenues sufficient to pay debt service on the bonds; additional bonds tests which allow the issuer to issue additional bonds only if revenues available to pay for such bonds exceed certain levels or coverage requirements; maintenance covenants which provide that the issuer will maintain the facilities and equipment in order to continue to generate revenue sufficient to pay debt service on the bonds; sale and encumbrance covenants which provide the issuer will not sell, lease, pledge, encumber, alienate or otherwise dispose of the project or facilities while the bonds are outstanding; and insurance covenants which provide that the issuer will adequately insure the project or facilities while the bonds are outstanding.

The buyers of municipal bonds, i.e. the lenders, include both individual and institutional investors such as high net worth individuals, investment banks, insurance companies, hedge funds and mutual funds. By purchasing a municipal bond, the purchaser is lending money to the issuer of such bonds and the issuer is utilizing such funds to undertake a capital improvement project. Investors generally purchase municipal bonds because of the favorable tax treatment on the interest they are paid as a result of holding such debt obligations. Subject to compliance with federal tax law, the federal government does not tax the interest paid to investors holding municipal bonds. In most states, the interest paid on municipal bonds is also exempt from state taxation. In order to qualify for such tax exemption, the projects financed with the bonds must qualify for tax exemption and the issuer must comply with certain provisions of the Internal Revenue Code of 1986, as amended and certain regulations promulgated thereunder (the "Code"). Failure by the issuer to comply with such requirements could cause interest on the bonds to become includable in gross income for federal income tax purposes.

Generally municipal bonds are sold in private placement transactions or publicly offered municipal securities offerings and subject to compliance with federal securities laws. In a private placement transaction, the issuer will negotiate directly with a bank (often times a local or community bank) whereby the bank will purchase the bonds directly from the issuer and hold such bonds as an investment for the bank's own account. Publicly offered bond transactions are generally sold pursuant to a negotiated or competitive sale process. In a negotiated sale, an investment bank, acting as an underwriter, will purchase the bonds pursuant to a bond purchase agreement with the intent to resell the bonds to investors in the secondary market. In a competitive sale, the issuer, working with its financial advisor, will offer the bonds for initial sale to investment banking institutions pursuant to a competitive bidding process whereby potential purchasers will submit bids for the bonds on a set date and time pursuant to a notice of sale and bidding instructions. In both competitive and negotiated sales, the bonds are marketed to potential purchasers

via the preparation and distribution of disclosure documents known as the preliminary official statement and financial official statement (collectively referred to herein as the "offering document"). Such offering document is the equivalent of a corporate prospectus and includes material information about the issuer, including its governmental structure and purpose, the terms of the bond transaction, the projects to be financed, the legal authority to undertake such projects, the maturity structure and interest rates, the security for payment of the bonds, and material financial information of the issuer and the issuer's operations.

In all municipal finance transactions, the various transaction participants will retain legal counsel to ensure that legal requirements are satisfied and the issuance of the bonds or debt obligations is conducted in compliance with various federal, state and local laws. The primary roles of legal counsel in municipal finance transactions are: bond counsel, special tax counsel, disclosure counsel, underwriter's counsel, and trustee's counsel. The issuer's general or in-house counsel also play a critical role in working with the aforementioned specialists to complete a municipal finance transaction.

B. <u>In House or General Counsel</u>

Issuers of municipal bonds often have general legal counsel either in house or on retainer acting as "general counsel" with respect to a multitude of legal issues including general governance, labor and employment matters, contracts, purchasing/procurement, regulatory compliance and litigation matters. Such attorneys may be employees of the issuer such as city attorneys, staff attorneys, etc., or may be private attorneys or law firms hired to act as legal counsel for the issuer on general matters. Often referred to as "issuer's counsel" in the context of a municipal finance transaction, such lawyers will interact with bond counsel, special tax counsel, disclosure counsel and underwriter's counsel in connection with certain aspects of a financing. For example, to establish due and valid authorization in connection with certain actions of an issuer relating to authorization, sale and issuance of general obligation bonds, general counsel will often provide an opinion that all actions of the governing body of an issuer were conducted in accordance with applicable local law, the bylaws or articles of incorporation of the governing body, charter provisions, and other applicable state law statutes.

Additionally, with respect to the disclosure of information relating to a bond issue in an offering document, general counsel will often review and prepare disclosure relating to current and anticipated litigation of the issuer to be included in the offering document to ensure material information is being adequately presented to potential investors. Because of their day to day interaction with issuers, general counsel will often provide other transaction participants valuable information as to the particular legal issues relating to the issuer that are pertinent to securities disclosure, tax compliance, and compliance with local laws governing an issuer.

C. Bond Counsel

The primary function of bond counsel in a municipal finance transaction is to represent the issuer and to ensure the issuer complies with state and federal laws governing the authorization, sale and issuance of the municipal bonds. At the conclusion of a transaction bond counsel will customarily render its bond counsel opinion with respect to the validity of the bonds and the tax treatment of interest on the bonds. The issuance of municipal bonds is predicated on the authority granted to issuers under the laws of each state and compliance with such statutes and the local rules and regulations applicable to each issuer often contained in their bylaws, articles of incorporation, rules of procedure, enabling legislation and charters.

The role of bond counsel originated in the late 1800's following widespread litigation regarding the validity of bonds issued throughout the United States. In a number of instances bonds were found to have been issued without complying with the requirements of state constitutional provisions, statutory requirements and local law and were thus, invalid. As a result of the financial loss suffered from such invalidity, banking institutions, underwriters and investors in municipal bonds began to require an opinion be provided by reputable, specialized attorneys, commonly referred to as "bond counsel", as to the validity of the transaction and compliance with applicable laws.

In the early stages of the bond counsel practice, it was common for issuers to undertake the process of attempting to comply with all of the legal procedures to issue bonds on their own and following all such action, a final transcript of proceedings would be provided to bond counsel for review and approval. Following bond counsel's review of the proceedings authorizing the issuance of such bonds, if the proceedings established compliance with applicable law, bond counsel would then provide a legal opinion, which was often attached to the bonds, to the effect that the issuer had complied with the various legal requirements governing the issuer and the issuance of the bonds and had validly issued the bonds in accordance with applicable law. By the early 1900's, the practice of utilizing the bond opinion to enhance the marketability and legitimacy of the municipal bonds had become common practice and bonds could only be marketed and sold if an opinion of bond counsel as to the validity of the bonds was delivered on the date the bonds were exchanged for their purchase price from investors, i.e. the "closing" of the transaction.

In rendering the bond counsel opinion, bond counsel relies upon the certified proceedings and other certifications of public officials and other persons furnished to bond counsel by the issuer and the issuer's other consultants. Bond counsel's opinion is based on facts and law existing as of the date of the closing and following the issuance of the opinion, bond counsel undertakes no obligation to update its opinion in the event there are chances in law following the closing. The opinion of bond counsel customarily provides that: the bonds have been duly authorized, issued, and delivered in accordance with applicable law; the bonds constitute valid and legally binding obligations of the issuer; the security for the bonds, whether ad valorem taxes or special revenues available to the issuer, are sufficient to provide for the payment of the interest on and principal of the bonds and

have been levied, collected and pledged for such purpose; and the interest on the bonds is excludable from the gross income of the owners for federal income tax purposes under the statutes, regulations, published rulings, and court decisions existing on the date of the bond counsel opinion.

The responsibilities of bond counsel have expanded over time and while the primary responsibility of bond counsel is still to give an opinion regarding the validity and binding effect of the bonds, the source of payment and security for the bonds and the excludability of interest on the bonds for federal income tax purposes, bond counsel now also plays a much more active role in providing additional guidance to the issuer with respect to the legal process and regulatory procedures of a municipal finance transaction. In jurisdictions where other governmental approvals are required, such as required review and approval by state attorneys general, bond issuance review boards, or state boards of finance, etc., bond counsel will also navigate, on behalf of the issuer, the process by which the transcript of proceedings and other evidence of compliance with applicable regulatory and legal requirements are submitted to and approved by such governing bodies.

It is important to note that the role of bond counsel predates the federal securities laws and that with the increased regulation of the sale and marketing of municipal bonds in the last fifty years, the responsibilities of bond counsel have expanded to cover certain aspects of such laws. Additionally, as discussed below, such securities laws have also lead to the creation of the additional roles of underwriter's counsel and disclosure counsel in municipal finance transactions. Furthermore, in negotiated sale transactions, bond counsel also provides a supplemental opinion to the issuer and the underwriter of the bonds to the effect that: the official authorizing document, i.e. the bond order, ordinance, resolution, etc., has been duly approved and executed by the governing body of the issuer, and is in full force and effect; the bonds are exempt securities within the meaning of the United States Securities Act of 1933 and the Trust Indenture Act of 1939, and it is not necessary in connection with the offer and sale of the bonds to the public to register or qualify the bonds or the authorizing document under such federal securities laws; and bond counsel has reviewed certain specified sections in the offering document and such information is an accurate and fair description of the laws and legal issues relating to the bonds and such information conforms to the authorizing document of the issuer.

In addition to providing the opinions discussed above, the customary duties of bond counsel in municipal finance transactions include the following: reviewing, analyzing and determining the authority granted under an issuer's enabling legislation, local rules, state statutes and regulations and applicable constitutional provisions; preparing and reviewing documents necessary or appropriate to the authorization, sale, issuance and delivery of the bonds; coordinating the authorization, approval and execution of documents such as bond ordinances, bond orders, trust indentures, authorizing resolutions, continuing disclosure undertakings, paying agent and escrow agent agreements and closing certificates; negotiating the terms of the sale documents such as the bond purchase agreement, notice of sale and bidding instructions or purchase letter to be entered into by the issuer and the initial purchasers of the bonds; assisting the issuer in seeking from other governmental

authorities such approvals, permissions and exemptions as determined necessary or appropriate in connection with the authorization, sale, issuance and delivery of the bonds; reviewing legal issues relating to the structure of the bonds and legal compliance with certain financial requirements such as debt limitations, additional bonds tests, rate covenants, etc.; attending meetings of the governing body of the issuer to explain legal requirements and authorization documents; assisting in limited circumstances with the review of offering documents, marketing materials and continuing disclosure undertakings prior to dissemination to potential investors; assisting with the evaluation of proposed projects and the spending of bond proceeds for such projects, including evaluating the compliance with federal tax laws and regulations; advising the issuer in connection with ongoing obligations relating to the bonds and the projects financed therewith; assisting the issuer's financial professionals with the explanation of the structure and security of a bond transaction and the presentation of such information to rating agencies, potential investors and other market participants.

The responsibilities of bond counsel will vary from transaction to transaction and the full scope of bond counsel's responsibilities in any given transaction will generally be documented in bond counsel's engagement letter. It is important to note that the firm serving as bond counsel will generally have specialized tax attorneys with the experience and expertise necessary to provide the portion of the bond counsel opinion which addresses the tax exempt status of the bonds, however, in certain instances, bond counsel will provide its opinion only as to matters of validity and compliance with state and local law and the issuer will rely on a separately engaged special tax counsel to provide the opinion as to tax exemption. The description of the role of special tax counsel below includes a summary of the responsibilities of tax counsel and is applicable to situations in which bond counsel relies on one of its colleagues within its bond counsel firm to undertake such duties or where the issuer engages special tax counsel separate and apart from the firm serving as bond counsel.

D. Special Tax Counsel

Special tax counsel provides guidance to issuers in all aspects of compliance with the requirements of the Code in connection with establishing and maintaining the tax-exempt status of municipal bonds. Additionally, special tax counsel advises issuers in connection with the implementation of effective tax compliance policies and procedures and defends the issuer in audits which challenge the tax-exempt status of debt obligations. Generally, special tax counsel will work closely with bond counsel to establish the reasonable expectations of the issuer with respect to the projects to be financed and the time in which such projects will be completed, the investment and spending of bond proceeds, the use of the projects, and the continued monitoring of the project and use of bond proceeds over time. Special tax counsel also monitors changes in the federal tax laws as they relate to the projects to be financed and the permitted uses of the facilities financed. The primary role of special tax counsel is to assist issuers with any federal tax law determination to ensure that the bonds of the issuer and the projects to be financed or refinanced are in full

compliance with the federal tax code and as such are afforded the status of tax-exempt obligations.

The responsibilities and duties of special tax counsel generally include: reviewing all offering documents pursuant to which the bonds are offered for sale, in cooperation and upon consultation with bond counsel, the issuer's governing body, general counsel, financial advisor, and other consultants and advisors of the issuer and the purchasers and underwriters of the bonds and their counsel; rendering an opinion as to the accuracy of the information in the offering documents pertaining to the federal income tax treatment of interest on the bonds; preparing tax representation letters or federal tax certificates to be executed by the issuer in order to establish compliance with various provisions of the tax code and related regulations; rendering an opinion that the interest on the bonds is excludable from gross income of the holders of the bonds for federal income tax purposes under existing statutes, regulations, rulings and court decisions existing on the date of issuance of the bonds; rendering an opinion that any action taken by an issuer, such as a lease, a management contract or a specific disposition of property, does not adversely affect the excludability from gross income of the holders of the interest on the bonds; making such inquiries of such persons, including attorneys, advisors, and consultants for the issuer and any final users of bond proceeds as necessary to establish the reasonable expectations of the issuer and the permitted use of proceeds of the bonds for tax-exempt purposes; conducting examinations and reviewing documents necessary to render the tax-exempt opinion; preparing required informational forms of the Internal Revenue Service including Forms 8038 and 8038G and filing of same with the appropriate office of the Internal Revenue Service; reviewing and advising with respect to the preparation of the documents authorizing the bonds, i.e. the bond order, bond ordinance or bond resolution, and related documents, including any escrow agreements, trust indentures, verification reports of certified public accountants; and providing ad-hoc answers to any specific tax law questions and issues that arise in connection with the issuance, sale and delivery of municipal bonds.

E. Disclosure Counsel

Due to increased oversight and regulatory requirements promulgated by governmental regulatory agencies in connection with the marketing and sale of municipal securities, issuers of municipal bonds have increasingly retained special legal counsel to address the disclosure of material information to investors and other market participants and provide advice relating to an issuer's continuing disclosure obligations. While issuers of municipal bonds are generally exempt from the registration requirements of federal and state securities laws, the United States Securities and Exchange Commission (the "SEC") indirectly regulates issuers of municipal bonds through enforcement of the antifraud provisions of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities and Exchange Act of 1934. These antifraud provisions prohibit any person, including issuers, from making a false or misleading statement of material fact, or omitting any material facts necessary to make statements made by that person not misleading, in connection with the offer, purchase, or sale of any security. With respect to materiality,

facts are generally deemed to be material if there is a substantial likelihood that a reasonable investor would consider such fact, or omitted fact, important to making an investment decision.

Additionally, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") requires an issuer of municipal bonds to submit annual financial information and notices of certain events to the Municipal Securities Rulemaking Board (the "MSRB"), which then makes such information available free of charge to investors and other market participants via the MSRB's Electronic Municipal Market Access System. Subject to certain exemptions, most municipal finance transactions are subject to Rule 15c2-12 and disclosure counsel, while customarily working with the issuer's financial advisor, will prepare and disseminate annual filings of financial information which generally include audited financial statements and financial and operating data customarily included in the issuers offering document. Under Rule 15c2-12, the issuers of municipal securities are required to disclose the occurrence of any of the following events within ten business days of the occurrence of such event: principal and interest payment delinquencies; non-payment related defaults, if material; unscheduled draws on debt service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers, or their failure to perform; adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of bonds; modifications to rights of bond holders, if material; bond calls, if material, and tender offers; defeasances; release, substitution, or sale of property securing repayment of bonds, if material; rating changes; bankruptcy, insolvency, receivership or similar event of the obligated person; the consummation of a merger, consolidation, or acquisition involving the issuer or a component unit or the sale of all or substantially all of the assets of the issuer or a component unit, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; or appointment of a successor or additional trustee or the change of name of a trustee, if material.

Disclosure counsel is often engaged by an issuer of municipal bonds, separate and apart from the issuer's bond counsel to provide specific advice relating to federal securities laws and to prepare the offering document in connection with the sale and issuance of the bonds to ensure the disclosure of information about the issuer, the bonds and the financial and operational aspects of the issuer is complete and accurate. In certain instances, bond counsel will also provide services as disclosure counsel in a municipal finance transaction. Disclosure counsel will work closely with the issuer and the issuer's general counsel, bond counsel, financial advisors, accountants, and other consultants, to prepare and disseminate general and financial information set forth in the issuer's offering documents and to ensure the issuer complies with the continuing disclosure obligations required by Rule 15c2-12.

Disclosure counsel will provide a legal opinion at the closing of the municipal finance transaction, in the form of a negative assurance letter, concerning the accuracy of the information presented in the issuer's offering documents and bond documents. Generally such opinion will note disclosure counsel's participation in the preparation of the official statement and will specifically provide that in the course of disclosure counsel's duties in connection with the bonds and the preparation of the offering document, nothing came to the attention of disclosure counsel that would lead disclosure counsel to believe that the offering document and the information contained in the offering document included any untrue statement of material fact or omitted to state any material fact necessary to make the statements made in the official statement not misleading.

The responsibilities of disclosure counsel typically include the following: reviewing all offering documents in connection with the marketing and sale of the bonds; preparing representation letters to be executed by persons or entities supplying information for inclusion in the offering documents, including information from the issuer's financial consultants, accountants and auditors; attending meetings of the issuer to discuss information to be included in the offering documents; assisting in the performance of any necessary due diligence investigation, including due diligence calls or meetings with rating agencies, potential investors and other market participants; making such inquiries of such persons, including attorneys, advisors, and consultants for the issuer and such other parties pertinent to the bond offering to establish the accuracy and completeness of the disclosure of information pertaining to the bonds and the issuer; reviewing such documents and matters as are necessary to enable disclosure counsel to render its opinion; preparing the continuing disclosure undertaking of the issuer in connection with each issue of bonds; analyzing the requirements of Rule 15c2-12 to ensure compliance by the issuer with such requirements and consulting with and advising the issuer regarding the required filings of any significant events. Disclosure counsel's primary objective is to ensure that the issuer meets its disclosure obligations under the federal securities laws in order to avoid inadequate disclosure practices, which could expose the issuer to both civil and criminal liabilities.

F. Underwriter's Counsel

In publicly offered transactions in which bonds are sold on a negotiated basis to an investment banking institution or syndicate of investment banking institutions, the issuer will negotiate with such bank or syndicate of banks, i.e. the underwriter or underwriters, to effect the sale and delivery of the bonds. The issuer and its team of financial professionals and legal counsel will work with the underwriter and underwriter's counsel to negotiate the structure of the bonds, the terms under which the bonds will be marketed and ultimately sold and the terms of delivery of the bonds in accordance with the provisions outlining such details in the bond purchase agreement. Underwriter's counsel represents the interests of the underwriter to ensure the underwriter meets its obligations under federal and state securities laws with respect to due diligence and disclosure relating to the sale of the bonds and also works to establish that the conditions and obligations of the issuer set forth in the bond purchase agreement are satisfied prior to the closing. In private placement sale

transactions, the purchasers of the bonds will also engage counsel to perform similar functions as underwriter's counsel with respect to conducting due diligence prior to the private placement of such bonds.

Additionally, underwriter's counsel is actively involved in the review of the offering document to ensure, on behalf of the underwriter, that the information contained in the offering document presents a complete and accurate depiction of the transaction, the security and terms of the transaction, the structure and operational status of the issuer and the financial condition of the issuer. In connection with the review of the offering document, underwriter's counsel will customarily conduct a due diligence meeting or conference call pursuant to which the underwriter and underwriter's counsel will ask questions in order to confirm that the statements in the offering document are true and correct and that there is no material information omitted from the offering document. In accordance with an underwriter's responsibility to conduct due diligence sufficient to make a reasonable determination that an issuer has made a contractual commitment to provide continuing disclosure as required under Rule 15c2-12, underwriter's counsel will generally review the continuing disclosure undertaking drafted by disclosure counsel or bond counsel to ensure it conforms to the requirements of the rule.

The customary responsibilities of underwriter's counsel in a municipal finance transaction include: confirming regulatory disclosures are sent and acknowledged by the issuer as required by rules of the MSRB; reviewing and providing edits to the disclosure in connection with the issuer's offering document; reviewing historic continuing disclosure filings to confirm statements in the offering document about prior compliance with Rule 15c2-12 are accurate and complete; reviewing operating information of the issuer to determine the type, content and format of historic continuing disclosure information filed by the issuer to confirm compliance with prior continuing disclosure undertakings of the issuer; reviewing the issuer's internet web site to gather background information on the issuer; reviewing current and historic audited financial statements of the issuer; conducting internet searches on the issuer and the economic conditions in the geographic region in which the issuer is located; reviewing proposed legislation that may affect the issuance of the bonds, the security for the bonds, the issuer or the issuer's financial condition; reviewing rating letters and rating reports relating to the bonds; drafting and distributing the due diligence questionnaire and conducting the due diligence conference; conferencing with the issuer's financial advisor, disclosure counsel, bond counsel and other consultants retained by the issuer in connection with the issuer's continuing disclosure obligations and any necessary remedial filings; reviewing and discussing the tax diligence conducted by the issuer's bond counsel or special tax counsel to form a basis to believe the structure of the bonds qualifies for tax exemption and determining whether the issuer has entered into post issuance tax compliance procedures; reviewing the bond resolution, bond order, bond ordinance or other documents of the issuer authorizing the issuance of the bonds; reviewing the trust indenture and related documents; drafting and negotiating provisions of the bond purchase agreement; preparing a "blue-sky-memorandum" in order to address the sale of bonds in various state jurisdictions and establishing the bonds are exempt from state securities law filing requirements; reviewing the final sale results of the bonds; and

reviewing the final transcript of proceedings including the opinions of bond counsel, disclosure counsel, trustee's counsel, and other special counsel to the issuer in order to confirm the closing conditions contained in the bond purchase agreement have been satisfied.

The opinion of underwriter's counsel is delivered to the underwriter at closing following confirmation of the receipt and delivery of the bonds and that all additional closing conditions addressed in the bond purchase agreement have been satisfied. Generally, the opinion of underwriter's counsel provides a negative assurance statement acknowledging that underwriter's counsel participated in the review and preparation of the official statement and that in conducting such activities as part of its due diligence, nothing came to the attention of underwriter's counsel that would lead underwriter's counsel to believe that the offering document and the information contained in the offering document included any untrue statement of material fact or omitted to state any material fact necessary to make the statements made in the offering document not misleading. Additionally, the opinion of underwriter's counsel will customarily provide that: under existing laws, the bonds are not subject to the registration requirements of the United States Securities Act of 1933 and the authorizing document of the issuer is not required to be qualified under the Trust Indenture Act of 1939; and the issuer's continuing disclosure undertaking provides the underwriter with a suitable basis to reasonably determine that the continuing disclosure undertaking of the issuer satisfies the requirements of Rule 15c2-12.

G. Trustee's Counsel

In certain types of revenue bond financings, a commercial bank or trust company will be engaged by the issuer to act as trustee for the bonds to oversee and perform the administrative duties relating to the municipal finance transaction. In municipal finance transactions which utilize a trustee, a trustee will generally perform the following duties: establish and manage the funds and accounts necessary for the receipt and expenditure of bond proceeds and the receipt and expenditure of certain funds and revenues of the issuer; maintain a list of record owners of the bonds; act as paying agent for the payment of principal and interest on the bonds; monitor compliance with covenants of the issuer; and, in the event of a default on the bonds, act on behalf of bondholders. Because the issuer and the bondholders are the beneficiaries of the trust established under a trust indenture, a trustee acts in a fiduciary relationship to both the issuer and the bondholders. Trustee's counsel is engaged to represent the trustee and will ensure the interests of the trustee are adequately documented in the indenture and that the operational and logistical mechanics set forth in the indenture relating to the flow of funds, notice provisions, compliance with covenants, ongoing obligations of the issuer or borrower and action to be taken if a default occurs are accurate and correct. Generally, trustee's counsel will provide an opinion to the effect that: the trustee is validly existing with authority to exercise its fiduciary responsibilities; the trustee has all requisite power and authority to execute and delivery the indenture and to perform the trustees obligations thereunder and consummate the

transactions contemplated in the indenture; and the indenture has been duly authorized, executed and delivered and constitutes the legal valid and binding obligations of the trustee.

H. Concluding Statement

The foregoing is not designed or intended to be a comprehensive or exhaustive discussion of the laws governing municipal finance transactions or the professional responsibilities of legal counsel when representing participants in municipal finance transactions; rather such discussion is designed to provide a cursory overview of the customary duties and general responsibilities of legal counsel participating in such transactions and the general contents of the legal opinions provided by such counsel in each respective role.