

# **Bond Case Briefs**

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## **Legality of Tax-Exempt Status for P3 Projects Scrutinized in Texas.**

The long-standing practice of classifying student housing projects built through public-private partnerships on state university-owned land as tax-exempt is being questioned by a Texas county attorney's office.

County Attorney Rodney Anderson of Brazos County has asked state Attorney General Ken Paxton to deliver a legal opinion on whether taxes should be levied on two Texas A&M student housing P3s in College Station, which collectively will house more than 4,500 students. The projects are among five P3s the university has negotiated and from which it expects to earn \$900 million in revenues over several decades.

In his [letter](#) to Paxton, Anderson points out that each developer of the two projects will own the facilities and improvements they build, finance and operate during the 32-year and 40-year ground leases that were negotiated. After the leases expire the university will take ownership of the properties.

One of the P3 agreements stipulates that the student accommodations can be used only by people associated directly with the university. However, language in the other, more recent contract does not rule out the option to sublease the housing to "persons who are not faculty, staff or students of Texas A&M or [the university-associated] Blinn College," Anderson pointed out.

The county attorney questions whether these elements of the P3 agreements meet the requirement that, to be accorded tax-exempt status, the property must be both publicly owned and used for public purposes.

He also pointed out that the P3-developed projects will compete with private housing projects that do not enjoy tax-exempt status, which puts owners of non-P3 housing units at a "competitive disadvantage."

In defense of the P3s' eligibility for tax exemptions, the university has cited case law that favors its position, including a 1992 court ruling that improvements to state land are tax exempt even if the state doesn't hold legal title to their improvement, reported the [Houston Chronicle](#).

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