
Muni Bonds Sold by Phantom Agency Draw Texas Town’s Scrutiny.

- **Wisconsin authority sold $24 million of bonds for Hutto**
- **Debt financed commercial and residential development projects**

City officials in a fast-growing suburb of Austin, Texas, hired a law firm to review two municipal-bond deals sold through a Wisconsin agency to help finance residential and commercial development.

Hutto, Texas, population 30,000, hired bond counsel Norton Rose Fulbright LLP to examine whether the deals, issued in late 2018 and early 2019 through the Madison, Wisconsin-based Public Finance Authority are valid under state law and can be refinanced. In selling $24 million bonds through the PFA, the city and developers bypassed a Texas Attorney General’s review of the bonds.

Norton Rose asked the Attorney General’s Public Finance Division whether it had any concerns with the structure of the PFA deals, according to a July 24 letter, obtained through a public records request.

“If everybody out there is going through the AG, why would you go outside the AG?” said city council member Mike Snyder, who was elected in 2019 after the PFA bonds were issued. “It could completely be above board and that’s great.”

The Public Finance Authority, started by the Wisconsin Counties Association with approval by state lawmakers in 2010, has issued $11.6 billion municipal bonds mostly for speculative projects, such as the American Dream mall and entertainment complex in New Jersey, cancer treatment centers and senior living facilities. The agency, which has no employees and farms out work to a financial advisory firm in California, has come under scrutiny from some public officials who say it can allow borrowers to skirt their oversight.

Law firm Orrick Herrington & Sutcliffe LLP helped draft the PFA’s enabling legislation and has served as bond counsel on $3.5 billion of PFA bond issues, including the Hutto deals, more than any other law firm, according to data compiled by Bloomberg.

The PFA, which charges fees for issuing debt, is responsible for a high percentage of defaults in the normally safe $3.9 trillion municipal market. In the last three years, 10% of payment defaults were borrowers through the PFA, much higher than any other issuer, according to Municipal Market Analytics. The Hutto bonds haven’t defaulted.

The bonds Hutto’s public development districts issued through the PFA are payable from assessments on property owners within the development, known as Co-Op and Cross Creek. The authority loaned the proceeds of the bonds to a local development corporation, which in turn paid developers for building infrastructure such as sewers, streets and parks as part of the overall development.

The developers are now in the process of selling the improvements to the city, structured as an installment sales contract. The structure was intended to “address the lack of clear statutory authority” to levy assessments to pay for for underwriters, lawyers, financial advisers on the deal as well as capitalized interest since the the bonds weren’t sold by a Texas issuer, according to Norton Rose’s July 24 letter.

Paul Braden, head of Norton Rose’s public finance practice, wasn’t available to comment. Kayleigh Date, a spokeswoman for the Texas Attorney General, said the office couldn’t comment on potential or ongoing matters.

The Public Finance Authority relied on Orrick’s opinion that the bonds were valid under Texas law, said Andy Phillips, an attorney for the PFA. Norton Rose has served as bond counsel for PFA deals both inside and outside Texas and is aware of what oversight is required under Texas law, he said. PFA is authorized to issue municipal bonds in all states under Wisconsin statutes, and relies on bond counsel, underwriters and sophisticated investors to determine how much risk they want to take, Phillips said.

Orrick attorneys weren’t available to comment, said Adi Weisman, a spokeswoman.

Hutto used the PFA because the city’s attorneys and financial advisers recommended it to city council, said Odis Jones, the city’s former city manager, who currently runs Missouri City, Texas.

“I think they were concerned about credit risk exposure” to the city, Jones said. “They decided this stuff is kind of new, we’re not going to take any risk.”

Preston Hollow Capital, a direct lender to municipalities, purchased the $6.6 million of Cross Creek bonds, according to offering document for the securities. Preston Hollow sold the bonds July 1. The firm still holds $17.4 million of debt issued for the Co-Op development, said Greg May, Preston Hollow’s managing director of corporate development.

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By Martin Z Braun

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— With assistance by Natalia Lenkiewicz