

Texas Public Finance Authority

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MINUTES OF THE MEETING OF THE TEXAS PUBLIC FINANCE AUTHORITY CHARTER SCHOOL FINANCE CORPORATION

July 7, 2010

The Board of Directors of the Board of the Texas Public Finance Authority Charter School Finance Corporation (the "CSFC") convened in open meeting, notice duly posted pursuant to law (a copy of which notice is attached hereto as Exhibit "A") at 10:00 a.m., Wednesday, July 7, 2010, Capitol Extension Hearing Room E2.028, Austin, Texas. Present were: Dr. Marina Walne, Chair; Mr. Tom Canby, Member; Mr. Bob Schulman, Member; Mr. Paul Jack, Member; and Dr. Susan Barnes, Member. Representing TPFA's staff was: Mr. Dwight Burns, Executive Director; Ms. Susan K. Durso, General Counsel, and Paula Hatfield.

Present in their designated capacities were the following persons: Tom Sage, Vinson & Elkins, LLP.

Item 1. Call to order.

Dr. Walne called the meeting to order at 10:05 a.m.

Item 2. Approval of minutes of the June 28, 2010 Board meeting.

Dr. Walne asked if there are any changes to the minutes as presented. Mr. Schulman moved to approve the minutes. Dr. Walne seconded. The motion passed unanimously.

Item 3. Discussion regarding staff's development of a standardized format for submission with a charter school's request for financing.

Mr. Burns presented a summary sheet form and requested Board input on preferred data to be provided to them for review in the future. Dr. Barnes explained that charters could file a proposal with the Texas Education Agency for expansion and TEA extensively reviews a number of factors

before taking action on an expansion agreement. If there is a way to capture any requests for proposals and whether or not those requests were approved. Another piece TEA could provide a staff turnover rate at the charters. If the data is by campus, it may not be practical, but if it is by charter, the information would be helpful. Mr. Schulman asked if the form was pre or post screening. Mr. Burns stated when charter schools submit requests for financing there is no screening.

Mr. Schulman suggested that a little more screening may be necessary than Texas Education Agency performs. For example, it would be helpful to look at the relationship between the charter school and its governing board. The governing board may meet all the requirements of conflict of interest under charter school law. The governance report submitted to TEA each year might be helpful to review. Some times beyond that there are relationships between the charter school and its governance board that should be known. Since those relationships are not necessarily revealed on the report, some questions would need to be posed to the school.

Mr. Schulman stated that he was unsure if reviewing the charter school expansion amendments would indicate viability of the school, because there are so many denials for so many reasons that do not affect the viability of the campus. One other thing, the status of accreditation is also interesting to review. It is possible to put accreditation in limbo during an investigation process is ongoing and if not asked about it, it might not be revealed. Mr. Schulman said he wanted to think about this more and possibly email some more suggestions.

Mr. Schulman expressed an interest in reviewing performance based monitoring, PBM. Even the “silk stocking” schools, the AEA campuses that were alternative education campuses had problems with this because of the way things were structured. Now, even the college prep schools are having issues with it and what happens is that a school is placed in stage of intervention and those are ever increasing interventions. Under the new rules and laws it could be considered as part of the accreditation process. This information is available online.

Dr. Barnes suggested soliciting from TEA staff for input to this form. Ms. Durso agreed that TEA’s website does provide a lot of relevant information. One of the issues is obtaining the information TPFA needs to make the charter school recommendation to the Board and another is determining what information the Board desires to review. Mr. Schulman asked if that information should be the same. Ms. Durso stated that was for the Board to decide. In the past, the Board has been given the documents and a recommendation with a description of how the recommendation was made. Based on discussions from the last meeting, it was thought that if staff consolidated the information into a summary sheet that accompanied the materials, which may or may not include the copy of the Proposed Offering Statement (POS), then the Board could formulate the questions for the schools to answer when present to aid the Board in making its decision. Ms. Durso stated that based on the 2010 allocations for the qualified school construction bonds it is expected more requests will be received and this form document would be useful going forward.

Dr. Walne stated that she believed the Board was looking at a summary document and it would accompany the full packet and help to pinpoint questions to ask. She asked if that was the Board's understanding about this document. Mr. Schulman stated no one on the Board wanted to complicate matters, but would want it simplified to get to the heart of the issue. He asked if the things that the TPFA staff would be concerned about would be the same things of concern to the Board and if not, perhaps the Board needs to be better educated about those concerns. There are other things that members of the Board may be aware of than those in the financial area are not as familiar with and might have an impact on the school.

Ms. Durso inquired about whether Board members wanted to read the Preliminary Official Statement. The POS is a large document that contains a lot of information about the school. Instead of the 45-page document from which the information must be pulled, TPFA staff might be able to provide information of interest in another format. Mr. Schulman asked if a list of the POS contents could be provided and reviewed so items could be requested that are not in the POS if desired.

Mr. Tom Sage, Vinson & Elkins, stated that he and others in the bond community would be interested and able to assemble this information for review. Mr. Burns stated staff would be appreciative of all help.

Mr. Jack asked about the process in place to determine the audits were actually presented to the governing board by a representative of the auditor. Factors such as whether it was a conditional or unconditional audit, whether it was accepted. Mr. Burns stated he had noticed that the auditor's last name on the A.W. Brown school audit was Brown so he had questioned if there was a pre-existing relationship between the two. Mr. Jack stated he would like to see the minutes that the charter school board had reviewed and accepted the audit.

Mr. Canby requested that the enrollment under the Charter School Information category reflect the enrollment cap. Under Project Description, reference the Government Code, chapter and section for the construction methodology that is being followed, construction manager at risk or other methodology. Mr. Schulman said confirmation that the charter has a charter or an amendment permitting it to use that methodology which is a requirement.

Ms. Durso asked if there was interest in whether the school has debt policies and what those debt management policies might be. Mr. Schulman said he would personally be interested in that information and would like it included.

Mr. Schulman said some aspects of the charter not otherwise revealed could be found in the audit reports. Ms. Durso stated that public information related to an investigation could be reviewed, but normally an investigation that has been opened and closed without action is not public information. There would be a problem, even though TEA could provide that information, if it was determined that the Authority had a right of access to it, it would not make the information public or something that could be relied upon in making your decision. Therefore, by simply having it, it may call into question whether it was used. Mr. Schulman asked why non-public information would not

be requested from TEA. Ms. Durso said it was possible. Mr. Schulman said if nothing was to be gained from it, of course, it would not be necessary. Ms. Durso said there was no reason it could not be requested from the school to answer whether or not it had been investigated.

Ms. Durso stated under the Open Records Act an investigation that is open and closed in many cases is not public information. Mr. Canby said after investigations that many times a report is issued and that report is public information and accessible.

Dr. Walne suggested that any more suggestions be provided to staff in an email. She added that the revenue assumptions were less interesting because it is pretty standard than the expense assumptions. She saw no expense assumptions at all on the summary sheet. She said she was interested in how the schools were spending money and where the gap is that permits the school to fund millions of dollars in debt service.

Mr. Burns directed the Board's attention to the Projections for the next three years, under Financial/Debt Information and said that item would include expenditure assumptions. She asked what the next step would be. Mr. Burns stated that the comments received today would be incorporated and other suggestions emailed later from the Board. Mr. Canby stated he would prefer to receive the full audit report.

Dr. Walne stated all the documents and financial statements would continue to be emailed and then the summary sheet would be provided also. Mr. Burns stated he would redistribute a revised version including all the comments.

Item 4. Brief overview of SWAPs, the Qualified School Construction Bond incentive program, and other financing terms and processes.

Mr. Burns provided a brief summary of Qualified School Construction Bonds program. It is one of the new tax credit programs created by the American Recovery and Reinvestment Act. It allows school districts to issue bonds and forward new construction, rehabilitation, repair, acquisition to use public schools. Originally in the program was meant to provide tax credit and that was in lieu of interest. Investors would receive credit from the federal government. That form of the incentive did not prove to be desired in the bond market. The Build American Bond program that provides incentive for long term bonds issued by municipalities such as the State of Texas was received better by the bond market. The Congress permitted this program to be issued as direct pay tax credit. The QSCB program has now been changed to permit it to be a direct pay program.

Mr. Sage pointed out that while the allocations end in 2010 there is no deadline when the allocations must be issued under the federal law. Texas received over a billion dollars of QSCB money so it will take several years to exhaust the allocations. The direct pay is required to be paid by the U.S. Treasury to the borrower on each interest payment date or prior to it. The Treasury organizations have a number of obligations to the Treasury to include withholding of income taxes for your employees, a number of other penalties the organization may incur with the Treasury. The

City of Austin had an offset with the Treasury so the money is withheld. The borrower is required to pay the full interest payment even though it is relying on the subsidy for the life of the debt. On a number of these requests, numbers are run with the subsidy and without it to make sure the school can pay if there is a problem with the subsidy.

Ms. Durso that the TPFA CSFC tax identification number was on the 8038G and asked if addressed the issue. Mr. Sage stated that the tax identification number on the 8038 CP form filed for the subsidy is the school's number and the schools envision receiving the tax credit money directly. Mr. Sage said the new CP form was created about two weeks ago.

Mr. Jacks asked if the projects had to be procured in compliance with the Davis Bacon Act and Mr. Sage confirmed this and said it was a federal statute that deals with prevailing wages to be paid to laborers working on a project. Mr. Schulman stated this was significant because ordinarily charters do not follow this statute. Mr. Sage said following this statute had a full range of impact on projects both in traditional and charter school districts. In some markets it has caused tremendous cost overruns and actually the schools decide it is more efficient to issue tax-exempt bonds without the Davis Bacon Act requirement and others have found the impact fairly minimal. It varies from market to market and from project to project.

Obviously, if a new school is being built a lot of the expense is buying new products so labor expense doesn't impact much. On large renovation projects, labor is significant. Mr. Schulman asked if Mr. Sage believe the Board would need to meet monthly. Mr. Sage did not want to get ahead, but stated he had discussed with Ms. Durso the possible need to schedule a couple of dates on the calendar so that people could organize around those dates. He stated that under the QSCB program and from information gathered from TEA and the fact the TPFA CSFC is uniquely qualified to issue Q-bonds because under federal law is that the conduit issuer must have jurisdiction over the project. Jurisdiction under the tax code is physical jurisdiction within your territory. For instance, the City of Houston cannot issue Q-bonds for Kipp charter school if Kipp has a facility located in the unincorporated areas or in Galveston. The City of San Antonio is a very expensive issuer. Dallas does not have an issuer. Most of the Q-bonds will be requests to TPFA CSFC. The \$127 million allocations already distributed were for schools who received 2009 allocations.

Mr. Burns stated that he had provided some information on SWAPs for Board review and he discussed the material briefly. The Authority has a SWAP policy. Ms. Durso stated that all state issuers are required to have a SWAP policy. Mr. Schulman asked if charter schools are considered local governments or if the question could be answered now. Ms. Durso stated she was unable to answer the question at this time. Dr. Walne said it was an interesting question to be answered.

Item 5. Consideration, discussion, and possible action on a Request for Financing for A. W. Brown, including adopting a resolution authorizing issuance of approximately \$5,250,000, Texas Public Finance Authority Charter School Finance Corporation Taxable Education Revenue Bonds (A. W. Brown), Series 2010Q (Qualified School Construction Bonds – Direct Pay), approving a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

Mr. Burns provided another copy of a memo and a version of the summary information sheet containing key facts for the requested financing. The financing will be privately placed with Regions Bank. The school has two campuses located in Dallas. The projects to be financed with the proceeds of the bonds requested include construction of a 1,500 seat auditorium that will be located on the Dallas campus and an acquisition of a portion of land that will be a new performing arts facility and athletic complex in Duncanville, Texas, a suburb south of Dallas.

The school has not requested a bond rating for this sale although the school has a prior rating of BBB. That rating was obtained before the long-term outstanding debt was restructured to a variable rate structure. All debt is retired in fifteen years. The legal covenants include additional bonds test that after this debt is issued no other debt can be issued unless certain tests are passed and that includes available revenue needs to be 1.1 times projected maximum annual debt service. The covenants also include a requirement that the school should at always maintain 90 days cash on hand and it is calculated annually on December 31.

Mr. Burns reviewed the debt service schedule showing a balloon payment in the structure. Mr. Jack asked if it was known how it complies with the additional bond test. Mr. Sage answered that the response is overly simple in that it is not additional debt, but debt that is already on the books. The restrictions apply only if the school desires to acquire additional new debt. Mr. Jack asked if QSCBs were considered new debt. Mr. Sage said that the restrictions were part of the QSCB initial part of the deal and for subsequent transactions the tests would need to be met.

Dr. Walne asked if there was a sense of how the balloon payment would be made. Mr. Sage said the school was planning to pre-pay it early over the next few years. If that does not work, the balloon payment will be refinanced. Mr. Jack asked if the school was planning to sell assets and Mr. Sage said no. Mr. Sage said the school had surpluses and was one of the first charter schools to be upgraded to BBB.

Mr. Sage indicated the school was not planning on entering into a swap any time in the near future and is very comfortable with the variable rate which is LIBOR plus 4-1/2%. The school has about \$3 million in the bank. Mr. Schulman asked if Mr. Sage was observing that lenders are requiring a SWAP provision. Mr. Sage said yes, banks typically lend for 7-10 years, but one of the reasons to issue bonds and why bonds work well is that it is possible to borrow for 30 years. Banks, in order to achieve a synthetic fixed rate for a more attenuated period of time, 15-30 years, they loan on a floating rate basis for a long-term period of time and then it is switched to fixed rate so more

business is brought to banks secondarily. SWAP providers earn a tremendous amount in providing swaps compared to lending money.

Mr. Jack asked if the variable rate bonds are approved today would the school be within its legal rights to enter into a swap because it does not have to come back before this Board. Mr. Sage said yes, and if that happens, that he would inform the Authority.

Mr. Schulman asked if staff was comfortable with the risk involved in SWAPs and if the recommendation was to approve the request. Mr. Burns said that after the school had provided reasonable assumptions for debt service without the use of a swap product and with the assumptions of the interest rate and the subsidy provided by the federal government, there is a reasonable assumption that the school can provide coverage of \$1.9 million of debt service. Mr. Schulman stated that the numbers did not impress him, but needed to know if the risk was acceptable. Mr. Burns answered yes.

Dr. Walne stated that approval of the request included variable rate debt and lenders are requiring that swap provisions can occur that the Board cannot require that the school not enter into a swap agreement later on to semi-fixed the rate. She asked if her understanding was correct. Mr. Sage stated her understanding was correct. In order to refinance the debt with tax-exempt or other qualified debt under the IRS Code, the swap has to be integrated. That means the issuer has to take actions to certify and approve the swap.

Staff recommended approval of the request from A. W. Brown including adopting a resolution authorizing approximately \$5.25 million of TPFAs CSFC Taxable Education Revenue Bonds (A. W. Brown), Series 2010Q (Qualified School Construction Bonds – Direct Pay), approving a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

Mr. Schulman moved to accept staff's recommendation. Mr. Jack seconded the motion passed unanimously.

Item 6. Adjourn.

The meeting adjourned at 3:28 p.m.

The foregoing minutes were approved and passed by the Board of Directors on December 10, 2010.


Paul Jack
Secretary, Board of Directors

ATTACHMENT: Posting Notice - Exhibit A



Open Meeting Submission

Success!
Row inserted

TRD: 2010005021
Date Posted: 06/29/2010
Status: Accepted
Agency Id: 0113
Date of Submission: 06/29/2010
Agency Name: Texas Public Finance Authority
Board: Texas Public Finance Authority Charter School Finance Corporation
Liaison Id: 3
Date of Meeting: 07/07/2010
Time of Meeting: 02:00 PM (###:## AM Local Time)
Street Location: Capitol Extension Hearing Room E2.028
City Location: Austin
State Location: TX
Liaison Name: Paula Hatfield
Additional Information Obtained From: If you need any additional information contact Paula Hatfield, 512/463 5544, 300 W. 15th Street, Suite 411, Austin, Texas 78701.

TEXAS PUBLIC FINANCE AUTHORITY
 CHARTER SCHOOL FINANCE CORPORATION
 WEDNESDAY JULY 7, 2010, 2:00 P.M.
 CAPITOL EXTENSION HEARING ROOM E2.028
 AUSTIN, TEXAS 78701

- Agenda:**
1. Call to order.
 2. Approve the minutes of the June 28, 2010 Board meeting.
 3. Discussion regarding staff's development of a standardized format for submission with a charter school's request for financing.
 4. Brief overview of SWAPs, the Qualified School Construction Bond incentive program, and other financing terms and processes.

5. Consideration, discussion, and possible action on a Request for Financing for A. W. Brown, including adopting a resolution authorizing issuance of approximately \$5,250,000, Texas Public Finance Authority Charter School Finance Corporation Taxable Education Revenue Bonds (A. W. Brown), Series 2010Q (Qualified School Construction Bonds ; Direct Pay), approving a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

6. Executive Session:

Pursuant to Texas Government 551.071(2), the Board may convene in closed session at any time during this meeting to obtain legal advice from its counsel concerning any matter listed on this agenda, in which the duty of its attorney under the Texas Disciplinary Rules of Professional Conduct conflicts with Texas Government Code, chapter 551.

Reconvene Open Meeting

7. The open meeting will be reconvened for final action of the Board concerning matters deliberated in the Closed Meeting, if such action is required.

8. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Paula Hatfield or Donna Richardson at 512/463 5544. Requests should be made as far in advance as possible.

Certification: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Susan K. Durso, General Counsel, Certifying Official; Paula Hatfield, Agency Liaison.

New