



Guidelines for Short-Term Borrowing for School Districts

Alabama Association of School Business Officials (AASBO) Morning Break Webinar

Wednesday, May 20, 2020

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Kane Burnette

Partner

Kane Burnette's primary practice involves serving as bond counsel to municipalities, counties, boards of education and public corporations throughout Alabama on both publicly underwritten and privately placed tax-exempt financings.

Kane is particularly active in the public education sector, where he has represented both public universities and boards of education on tax and finance matters, and he currently serves on the faculty of the University of Alabama's academy for finance training for new school superintendents and chief school financial officers.

In addition to bond counsel engagements, he has served as company counsel and bank counsel in letter-of-credit backed transactions, as lender's counsel in direct placement transactions and as trustee's counsel. He also advises municipal clients on economic development and incentive matters. Kane has experience in representing governmental bodies in compliance matters before the Internal Revenue Service and the U.S. Securities and Exchange Commission.

As an Alabama-licensed Certified Public Accountant (currently inactive), Kane worked in the Birmingham office of Ernst & Young LLP before attending law school.

Accolades

- Listed in *Chambers USA*, Banking & Finance: Public Finance, 2020
- Listed in *Mid-South Super Lawyers*, "Rising Stars," Government Finance, 2016-2019
- Listed in *B-Metro*, "Top Lawyers," 2019

Professional & Community Activities

National Association of Bond Lawyers
American Institute of Certified Public Accountants
Alabama Society of Certified Public Accountants
Alabama Council of School Board Attorneys
Mountain Brook Lacrosse, Treasurer



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Practices

Public Finance
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Education

J.D., University of Alabama School of Law, 2009, *magna cum laude*

Master of Accountancy, University of Alabama, 2003

B.S., Accounting, University of Alabama, 2002, *summa cum laude*

Licensed In

Alabama

Alan K. Zeigler

Partner

Alan Zeigler's primary practice area is public finance. He has served as bond counsel and as underwriter's counsel on tax-exempt financings involving public facilities and utilities for municipalities, counties and boards of education throughout the state. He has participated in numerous legislative drafting projects and has advised cities, counties and boards of education on finance and election matters, particularly those pertaining to ad valorem taxation for public schools. Alan served as pro bono counsel for the ad valorem school tax project undertaken by the Public Affairs Research Council of Alabama (PARCA) in 2006 and as pro bono counsel for PARCA's school sales tax project in 2008. He currently serves on the faculty of the University of Alabama's Academy for Financial Training for new school superintendents and chief school financial officers.

Alan has spoken on public finance-related topics in connection with continuing education projects for education, municipal and county officials throughout the state. He has been listed annually in *The Best Lawyers in America*® in the Public Finance Law category since 2003 and has been listed in *Chambers USA* as a "Leading Individual" in Banking & Finance: Public Finance Law since 2008. He is a member of the National Association of Bond Lawyers and the Alabama Association of School Board Attorneys and is a fellow in the American College of Bond Counsel.

Accolades

- American College of Bond Counsel, Fellow
- Listed in *Chambers USA*
 - Banking & Finance: Public Finance, 2008-2020
- Listed in *The Best Lawyers in America*®
 - Public Finance Law, 2003-2020
 - "Lawyer of the Year," Birmingham, Public Finance Law, 2017
- Alabama Association of School Boards, Meritorious Service Award, 2004

Professional & Community Activities

Leadership Birmingham, Board of Directors
Leadership Alabama
Board of Directors, Former Member
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Practices

Public Finance
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Education

J.D., Vanderbilt University Law School, 1974, *Law Review*

B.A., English, Birmingham-Southern College, 1971, *cum laude*; Phi Beta Kappa

Licensed In

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Clerkships

Judge Walter P. Gewin, United States Court of Appeals, 5th Circuit

Admitted In

United States Court of Appeals, 11th Circuit
United States District Court, Northern District of Alabama
Supreme Court of the United States



Agenda

- Overview of budget situation
- Discussion of operating loans/lines of credit
- Q & A

Overview of Budget Situation

- Probably too soon to draw conclusions, but...
- State Revenues
 - Proration not viewed as likely
 - Budget Stabilization Fund/Rainy Day Account
 - Future ETF appropriations could be reduced

Overview of Budget Situation (cont'd)

■ Local Revenues

- Ad Valorem – likely to be stable
- Sales/Use - ??
 - Probably down somewhat in most areas
 - Flat/up in a few jurisdictions

Overview of Budget Situation (cont'd)

■ Federal Revenues

- The Federal CARES Act (Coronavirus Aid, Relief and Economic Security Act) appropriates \$30.75 billion to education.
- ALSDE is scheduled to receive \$216.9 million, at least 90% of which (\$195.3 million) is for local school systems.
- Further distribution based on Title I funding.

Overview of Budget Situation (cont'd)

- Broad range of uses of CARES Act funds, including technology, meals, sanitization and other expenses necessary in connection with Coronavirus support.
- Future legislation?

Operating Loans/Lines of Credit

- Alabama is a “Dillon’s Rule” state – governmental bodies only have those powers granted to them by the Legislature of Alabama.
- Two statutes authorizing short-term or operating borrowing:
 - § 16-13-145 (older method)
 - § 16-13-300 (newer method)

Older Method - § 16-13-145

- Authorizes a board to borrow in anticipation of current revenues, if funds on hand are not sufficient to pay salaries and other current expenses
- “Unsecured” borrowing – not backed by a pledge of specified local revenues
- Requires the Board to determine, on an ongoing basis, that the loan balance does not exceed a formula prescribed by law (Total SDE-approved revenues LESS current revenues received LESS expected debt service)
- Still “good law” and is used by some lenders in their form loan documents.

Newer Method - § 16-13-300

- Issuance of Warrant and pledge of a local revenue source
 - Authorized “for the purpose of providing any money or moneys deemed necessary by the board to provide for the administration and operation of the board to the expiration of the then current fiscal year.”
- Eliminates the cumbersome rolling available amount calculation required under § 16-13-145.

Newer Method - § 16-13-300 (cont'd)

- A warrant issued by a Board under § 16-13-300 may not be a general obligation; rather, the Board must identify and pledge a revenue or revenues available for that purpose.
 - Ad valorem tax
 - Sales tax
 - Other revenue source
- Unlike the older method, warrants must be approved by the State Superintendent of Education.

Practical Considerations

- Usually these lines of credit do not qualify for federal tax-exempt treatment (still exempt from Alabama income taxation).
- Very often short-term borrowings bear interest at a variable rate (for example, LIBOR + ____%), which requires “specific approval” of the State Superintendent of Education.

Practical Considerations

- Maturity of Loan
 - While technically not a requirement of state law, it is good budget procedure to have the short-term borrowing mature at the end of the current fiscal year.
- No requirement that a Board utilize a request for proposals (RFP) process, but...
 - Compare interest rates and fees (e.g., “unused facility” fee, commitment fee, etc.)
- Remember “Dillon’s Rule” – standard bank forms and notes are discouraged.

Questions and Answers

