

NABL Releases
2003 Model Bond Opinion Report

The National Association of Bond Lawyers today released the 2003 edition of its Model Bond Opinion Report to provide guidance to lawyers rendering opinions in public finance transactions. The revised Report is the result of a two-year project by NABL's Opinions and Documents Committee and replaces a prior 1997 report. The Opinions and Documents Committee is comprised of 11 NABL members from throughout the U.S., including 6 past presidents of NABL and members of the committees involved in previous editions of the Report.

The project to revise the Report was initiated in November, 2000, at the behest of NABL's Board of Directors, in the belief that more expansive materials were needed to reflect prevailing opinion practice for bond counsel and developments in the municipal bond industry. In announcing the 2003 edition, NABL President Helen Atkeson thanked Foster Clark, chairman of the Committee, for his leadership in producing "a thoughtful revision of the model opinions and accompanying commentary that reaffirms the high degree of confidence bond counsel should have before rendering the 'unqualified' opinion historically delivered in public finance transactions." Public finance transactions covered by the revised Report include bonds and other forms of debt issued by states, political subdivisions and public authorities to finance a wide variety of public and private projects.

While reaffirming the degree of confidence bond counsel should have before rendering an "unqualified" opinion, the revised Report articulates more clearly the examination process involved in reaching the conclusion necessary for such an opinion. The Report states that bond counsel may render an "unqualified" bond opinion if it is firmly convinced (also characterized as having a "high degree of confidence") that, under the law in effect on the date of the opinion, the highest court of the relevant jurisdiction, acting reasonably and properly briefed on the issues, would reach the legal conclusions stated in the opinion. This articulation conforms the basis for such "unqualified" opinions in municipal finance transactions to the recognized basis for rendering "unqualified" opinions in other business transactions. It is not intended to reduce either the level of certainty that bond counsel, in its professional judgment, should reach before delivering an "unqualified" opinion or the level of confidence to be afforded such opinions by bond purchasers.

The revised Report also provides guidance to participants in public finance transactions with respect to opinion and tax related disclosure items, including the disclosure of post-issuance federal tax law requirements. While taking no position on the use of "exploding," "qualified" or "reasoned" opinions, the Report does note that, when used, such opinions should be accompanied by appropriate disclosure to reflect the lower level of certainty inherent in the legal conclusions expressed in "reasoned" or "qualified" opinions and the circumstances in which an "exploding" opinion may cease to apply.

Foster Clark, a bond attorney with Balch & Bingham LLP in Birmingham, Alabama, and the chairman of the Opinions and Documents Committee, thanked the Committee members for their work and expressed his thoughts about the project: "The Committee was made up of very experienced bond and tax lawyers, all of whom have devoted significant time and effort to this project during the past two years. Throughout the project, we have been keenly aware of the significance the bond market places on our opinions and we have worked very hard to reconcile the form of the bond opinion with the realities of the current market, legal and regulatory climates. We are confident that the Report will provide valuable assistance to bond lawyers and will help them maintain the highest level of professional service to their clients and the public debt markets."

The revised Report is available on NABL's website at www.nabl.org.

Dated: February 14, 2003