



# The Essentials

# State Law Issues (Basic)



# NABL U Presents: The Essentials



## Goal:

Framework to analyze many state law issues that you may face:

- Bond Counsel
- Disclosure Matters



# NABL U Presents: The Essentials



## Bond Counsel Opinion

- **Opinions delivered:**
  - Validity & Enforceability
    - Matters of state law
  - Tax Exemption
    - Federal AND state
- **NABL Standard: “Firmly Convinced”**



# NABL U Presents: The Essentials



## Consequence If Not Valid and Enforceable?

- ***Ultra vires* borrowings void and unenforceable**
- **Washington Public Power Supply System (1983)**
  - No authority for take or pay contracts used to secure the bonds
  - Defaulted on over 2.25 billion of revenue bonds



# NABL U Presents: The Essentials



## Validity & Enforceability

- **Source of Authority:**
  - Dillon's Rule -vs- Home Rule
    - Local charter/ordinances -vs- State Law
    - Local charter/ordinances -plus- State Law



# NABLU Presents: The Essentials



## Validity & Enforceability

- State Law Considerations
  - Authority
    - Purpose/Use of Funds
    - Structure and Security (e.g., general obligation debt, revenue bonds, moral obligations/appropriation bonds, lease obligations, anticipation notes)
    - Instrument Type (e.g., warrant versus bond)



## Validity & Enforceability

- State Law Considerations (cont'd)
  - Procedural Requirements
    - Election or Referendum Requirements
    - Open Meeting Requirements
    - Required Findings
    - Quorum Requirements
    - Notice Requirements
    - Number of Readings
    - Public Hearing Requirements



# NABL U Presents: The Essentials



## Validity & Enforceability

- State Law Considerations (cont'd)
  - Term Requirements
    - Principal terms of the instrument (e.g., redemption, maximum maturity, maximum interest rate)
    - Debt Limit
      - Is this obligation “debt”?
      - Is this “debt” subject to the limit?
    - Savings Percentage on Refunding
    - Competitive Sale Requirements





# NABL U Presents: The Essentials



## Validity & Enforceability

- State Law Considerations (cont'd)
  - Public Purpose Doctrine
    - Expanding:
      - Classic public purposes
      - Plus: Economic Development
  - Lending of Credit



# NABL U Presents: The Essentials



## Validity & Enforceability

- State Law Considerations (cont'd)
  - Volume Cap for Certain Private Activity Bonds
  - And More!



# NABL U Presents: The Essentials



## Disclosure and State Law

- **Rule 10b-5: Antifraud provisions:**

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) to employ any device, scheme, or artifice to defraud, **(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading,** or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.



## Disclosure and State Law (cont'd)

- Materiality
  - Highly fact specific
  - Reasonable Investor Test



## Disclosure and State Law (cont'd)

- What state laws could affect this deal?
  - Any approvals still needed?
- Security/Source of Payment
  - What does G.O. mean in this jurisdiction?
  - What recourse is available?
- Other State Law Particularities
  - e.g., remedies, bankruptcy, etc.