



A Financial Team

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Over the last few years, the word “team” has often invoked images of heroic teams of doctors, nurses, and emergency medical technicians who were on the front lines helping the victims of Covid-19, or images of news teams of reporters, producers, and cameramen who worked together to deliver accurate and breaking news as a novel health crisis evolved. Now that we’ve begun to move beyond the pandemic, the word team hopefully invokes a more positive connotation, perhaps involving excitement about your favorite sports team – the Eagles, the Steelers, the Flyers or the Penguins, or perhaps the basketball, swim, or baseball team of your children that you spend endless hours spectating.

However, one type of team that is likely not at the forefront of your mind is a financing team. While our work doesn’t involve saving lives or delivering critical news to the community, and our teams don’t draw large, cheering crowds with pom-poms or colorful face paint, when it comes time for your school district to borrow money for capital projects or to refund debt, it will be beneficial for you to understand who comprises a financing team and how such a team can help a district and its officials find their way through a financing. This will permit school district officials to remain focused on addressing essential matters and challenges facing your school district.

Over the last sixteen years of practicing law, playing a role as part of the financing team has been my favorite aspect of being a public finance attorney. Perhaps I enjoy the “team” play of a financing because I played division three women’s soccer at Dickinson College and enjoyed the comradery of my fellow teammates (particularly upon a victory against a Centennial Conference rival). Or maybe it’s because I’m a mother of two children who I frequently encourage to work together to accomplish their household chores. Whatever the case may be, working alongside a team of intelligent, highly motivated professionals provides me with a sense of passion in my practice and has been a driving force throughout my legal career. Behind every financing is a team of professionals, each of whom play different roles in structuring the financing and seeing it through to a successful settlement.

On a soccer field, team players all have separate roles and responsibilities, yet each player shares a common goal of winning by excelling at their own role, working together, and winning by scoring more goals than the opposition. Similarly, each professional on the financing team plays a different role and carries different responsibilities in navigating through a financing transaction. At the same time, all team players share the common goal of accomplishing the lawful issuance of debt and successfully closing the financing in a manner that provides the most benefit to the issuer.

Teams are often led by captains, who take the lead and help dictate the teams’ actions. The role of bond counsel, which is my main area of focus in practice as a member of the financing team, who often takes on the role of the unofficial “captain.” Under state

and federal law, municipalities have the ability to issue debt on a tax-exempt basis which generally allows municipalities to borrow money at rates lower than taxable commercial rates. After being retained by the issuer (school district), we work as special “bond” counsel to the issuer in conjunction with your local solicitor. As bond counsel, we review the proposed financing for compliance with federal tax and securities laws, as well as compliance with the “Local Government Unit Debt Act”, which is Pennsylvania’s law governing the issuance of the debt by school districts, municipalities, and other “local government units.” As mentioned above, bond counsel often leads the financing team by coordinating the other team players and guiding the financing to make certain that the debt issuance adheres and conforms to the nuanced federal legal requirements concerning tax-exempt indebtedness, namely those set forth in the Internal Revenue Code of 1986 and the regulations promulgated thereunder. Bond counsel typically drafts the relevant debt legislation (resolution or ordinance) and prepares the necessary documentation to memorialize the legal requirements relative to tax-exempt debt. As a condition of the closing, bond counsel renders an opinion to the bondholders regarding, among other things, the tax-exempt status of the debt under current federal and state law. As an aside, in our role as public finance attorneys, we closely monitor and track all changes and updates in law, which in the last few years involved the elimination of tax-exempt advance refundings by issuers under federal law and the extension of the maturity date for certain tax and revenue anticipation notes under state law.

Bond counsel works with your local solicitor, who is the attorney most intimately familiar with the laws and regulations that govern your school district. The solicitor will assist in reviewing any debt legislation, ensuring that local codes and the Sunshine Act are complied with, especially in light of the nuances created by the post-covid virtual world in which many meetings now take place via zoom and other remote meeting technology. Additionally, the Solicitor will review the closing documents and will ultimately render an opinion on behalf of the issuer regarding certain aspects of the debt issuance.

Another key player is the financial advisor - the “numbers crunchers.” Financial advisors are hired by and represent the issuer of the debt. They can assist the issuer with budgeting, in determining whether to borrow funds or use reserves to fund the costs and expenses of undertaking a capital project. Determining whether savings can be achieved by refunding or whether certain cash flow challenges can be alleviated by restructuring outstanding debt are also topics about which financial advisors can provide assistance. Professionals in this role are well-versed in explaining the pros and cons of financing vehicles, namely, whether to finance with bank loans (private placement with a banking institution), borrowing from a municipal bond pool, or to issue bonds

(to the public bond market) - and the timing and methods of manners of incurring debt. The financial advisors often coordinate the financing schedule with the schedule of the capital project construction established by engineers or architects in order to dovetail the financing with the timing of the capital project to ensure that funds are available when needed (and not too early).

If a bond issue is the avenue selected as the method of issuing the debt, the fourth key player on the field is the underwriter, or purchaser, of the bonds. The underwriter is the institution that is selected by (but does not represent) the issuer, that is responsible for the marketing and selling of the bonds to investors in the capital markets. Typically, the underwriter will oversee the preparation of the offering document (referred to a prospectus or Official Statement) that contains information about the issuer and its finances so that investors can make an informed decision about investing in the bonds. Sometimes, an underwriter will hire their own attorney to represent them in a financing. I have acted as counsel to the underwriter, as well, and in that role, we represent the underwriter and address securities law matters, including the changes made in 2019 to the Securities Exchange Commission’s Rule 15c2-12, and the additional disclosure requirements encompassing financial obligations, including certain leases, bank loans, and guaranties of debt.

Fielding a team of these experienced players will provide the essential footing necessary for a smooth financing transaction. With the ever-increasing regulatory environment we live in, it is perhaps more important now more than ever to select a strong team for your upcoming financing project. While the impact of the pandemic may have halted some public finance projects, as we recover from the pandemic, we are seeing an increase in the pace of capital projects being undertaken. This is good news for builders, construction companies, and workers, but most of all, for the students that will benefit from improved facilities, more advanced technology, and safer infrastructure. The financing to complete this important work requires a solid team.

This article is intended to offer insight about the typical members of a financing team, and what each brings to the financing “field.” It is not meant to be exhaustive or to oversimplify the roles each professional plays or the elements that are necessary to effectuate a successful financing. However, with strong players comprising your financing team, you can take solace in knowing that the when the game-time whistle blows and the financing “game” begins, you have an experienced team ready and capable of playing their respective role with the utmost competence so that your district can focus on continuing to provide high quality educational services to the students who will shape the future for generations to come.