

be sent to the attorney after the award of the bonds had been made to a particular bidder. Pending the completion of the legal examination of such transcript, there was always uncertainty as to whether the bonds would be approved and delays in the delivery of the bonds. Delays were experienced in compiling the transcript and in amending and supplementing various papers and proceedings to meet the requirements of such attorney. Irregularities in bond elections discovered at the last moment were embarrassing impediments. Litigation occasionally resulted from efforts of public agencies to retain bid deposits or enforce accepted bids in situations where such attorneys failed to render approving opinions on the bonds. This early practice of dealers' employment of bond attorneys proved disadvantageous and is now largely supplanted by the practice of having the public agency issuing the bonds retain bond counsel. It is now customary for the issuing public agencies to offer approving opinions of bond counsel on practically all municipal bond issues. Underwriters and purchasers are thereby assured that the issuance of the bonds, from the initial inception to final delivery, conforms to constitutional, statutory, and charter requirements and that the bonds are otherwise valid and binding. In a publication relating to municipal bonds, one of the Nation's largest banks comments as follows:

The importance of a municipal bond attorney must never be underestimated. Because the procedure through which a unit of government may borrow for any purpose is specifically prescribed by law, the prospective bond purchaser must be assured that every step in the authorization process has been taken in strict observance of the law. This assurance is given to prospective investors by securing the unqualified approving legal opinion of a nationally recognized bond attorney. Municipal bonds are not generally marketable without such an opinion.

In striking contrast, no similar opinion of counsel is required for the sale of bonds of private corporations. The powers of private corporations to issue bonds are extremely broad and are not subject to substantive and procedural limitations of the type imposed upon municipal corporations. The validity of municipal bonds generally is dependent upon meticulous compliance with a maze of constitutional, statutory, and, in some cases, charter provisions and judicial opinions strictly limiting and circumscribing, both substantively and procedurally, the powers of public agencies to issue municipal bonds. In addition, the authority to issue municipal bonds is subject to the restrictive underlying legal principle that municipalities and other public agencies of a State may exercise only such powers as are expressly granted by law or are necessarily implied from powers expressly granted.

## 1. NATURE AND FUNCTIONS OF BOND COUNSEL

### (A) SCOPE OF DUTIES; SERVICES RENDERED

The branch of law in which bond counsels specialize comprises a vast array of general statutes, special laws, charters, constitutional provisions, opinions of State and Federal courts, and administrative and other rulings, pertaining to the authorization, description, terms, conditions, and procedures for the issuance of bonds of various types by the States, Puerto Rico, and many hundreds of counties, municipalities, and other public agencies. The scope of the duties of bond coun-