JONES WALKER

March 11, 2013

Alliance for a Better Charlotte
7210 Trevor Court
Charlotte, NC 28270

Re: City of Charlotte, North Carolina – Airport Revenue Bonds

Ladies and Gentlemen:

This Memorandum provides general advice and counsel concerning the impact, if any, Senate Bill 81 (General Assembly of North Carolina, Session 2013) ("Senate Bill 81") would have on the outstanding Airport Revenue Bonds (the "Bonds") issued by the City of Charlotte, North Carolina (the "City").

General Background Information.

Jones Walker is a nationally-recognized bond counsel firm with approximately 400 attorneys located in Alabama, Arizona, the District of Columbia, Florida, Georgia, Louisiana, Mississippi, New York and Texas. Jones Walker's 13 bond attorneys have been actively and continuously involved in public finance for more than forty-five years, having served as bond, underwriter, trustee, issuer, purchaser, borrower, corporate and special counsel for a myriad of state agencies and districts, public corporations, special districts, authorities, public trusts and political subdivisions. We are experienced in all types of state level governmental borrowings, including general obligation bonds, gasoline and special fuels tax secured bonds, tax credit bonds, lease revenue bonds, special assessment bonds, revenue bonds and financing structures in the areas of utilities, educational facility funding, certificates of participation, public-private partnerships, and derivative products. Our bond attorneys participate in public finance transactions on a local, regional and national basis. For example, Jones Walker recently served as bond counsel to the Public Finance Authority, a multi-state issuer, in connection with a student housing transaction in North Carolina.

JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE L.L.P.

8555 UNITED PLAZA BOULEVARD • BATON ROUGE, LOUISIANA 70809-7000 • 225-248-2000 • FAX 225-248-2010 • WWW.JONESWALKER.COM

ALABAMA ARIZONA DISTRICT OF COLUMBIA FLORIDA GEORGIA LOUISIANA MISSISSIPPI NEW YORK TEXAS

Documents Reviewed.

We have reviewed the Bond Order, adopted by the City Council of Charlotte, North Carolina, on November 18, 1985, Authorizing and Securing City of Charlotte, North Carolina, Airport Revenue Bonds, as amended and supplemented by the First Supplemental Bond Order, adopted on June 8, 1992 and the Second Supplemental Bond Order, adopted on August 23, 2004 (collectively, the "Bond Order"). The Bond Order provides for the issuance of new money and refunding airport revenue bonds and creates the pledge of net revenues.

We have also reviewed the correspondence of other commentators on the pending legislation.

Effect of Transfer on Bondholders.

Senate Bill 81 creates the Charlotte Regional Airport Authority (the "Authority"), mandates the transfer by the City to the Authority of all of its "right, title and interest to the Charlotte Douglas International Airport" (the "Airport") and authorizes and empowers the Authority to, among other things, "[p]urchase, acquire, develop, establish, construct, own, control, lease, equip, improve, administer, maintain, operate, and/or regulate airports and/or landing fields for the use of airplanes and other aircraft and all facilities incidental thereto, within the limits of Mecklenburg County." The Authority has no power of taxation.

By operation of law, Senate Bill 81 causes the Authority to become the successor agency to the City with respect to the Airport and its operations. The concept of a successor agency is not uncommon in the public finance world. In fact, Section 1301 of the Bond Order specifically contemplates the existence of a successor agency:

> Section 1301. Effect of Covenants. All covenants, stipulations, obligations and agreements of the City contained in this Order . . . shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements is transferred by or in accordance with law.
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> Except as otherwise provided in this Order, all rights, powers and privileges conferred and duties and liabilities imposed upon the City by the provisions of this Order shall be exercised or performed by the City Council, or by such other officer, board, body or commission as may be required by law to exercise such powers or to perform such duties.

Unlike other general obligation bonds that may be issued by the City, the Airport Revenue Bonds are limited obligations of the City. The Airport Revenue Bonds are secured solely from the net revenues of the Airport.[1] Senate Bill 81 causes all of the pledged collateral and sources of repayment for the Airport Revenue Bonds to be transferred from the City to the Authority by operation of law. Accordingly, upon adoption of Senate Bill 81, the provisions of Section 1301 of the Bond Order should, without any further action required on the part of the City, the Trustee or any of the bondholders, confer upon the Authority all of the rights, powers and privileges conferred and duties and liabilities imposed upon the City under the Bond Order.

We have specifically reviewed the question about whether bondholder consent would be required for the transfer mandated by Senate Bill 81. In as much as the transfer does not impact the security for the Airport Revenue Bonds this should not require bondholder consent because there is no impairment of the contractual obligations owed to the bondholders.[2]

The present situation is not unlike the legislative transfer of the Detroit Metropolitan Airport from Wayne County, Michigan to a newly created airport authority. In a court challenge, the Michigan Court of Appeals held as follows:

> "The pledge not to transfer airport property was meant to ensure that assets necessary to generate the revenue remain dedicated to that purpose. That fact has not changed: the airport property will remain subject to airport purposes and the revenue will continue to fund the bonds. Plaintiffs simply have not shown that the bondholders have a contractual entitlement to retain the commission as the airport manager, as distinguished from a new agency controlled by the board as set forth by the statute."[3]

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1 "The Bonds are special obligations payable solely from the Net Revenues, the City's rights to receive the same, and money and Investment Obligations held in the Funds, Accounts and subaccounts created hereunder, other than the Airport Discretionary Fund, and the income from such Investment Obligations and the investment of such money." Section 701 of the Bond Order.

2 Even if the transfer was deemed to substantially impair the contractual rights of the bondholders, the transfer should not require bondholder consent so long as there is a significant and legitimate public purpose behind the regulation, and if the means adopted to implement the legislation are reasonably related to the public purpose. *See* Wayne County Bd. of Com'rs v. Wayne County Airport Authority, 253 Mich.App. 144, 658 N.W.2d 804 (Mich.App. Sep 24, 2002) (NO. 241521, 242406)); 64 Am Jur 2d Public Securities and Obligations § 327.

3 *Id.* The Michigan Court distinguished the Wayne County case from a New Jersey case cited by the Plaintiffs in which bondholders challenged a legislative repeal of a promise regarding the use of revenue to secure bonds.

Effect on Rating of the Airport Revenue Bonds.

As noted above, the Airport Revenue Bonds are limited obligations of the City. Neither the credit nor the taxing power of the City are pledged for the payment of the principal or interest of the Airport Revenue Bonds.[4] The repayment of the Airport Revenue Bonds is made solely from the net revenues of the Airport.

The rating of the Airport Revenue Bonds is determined by the rating agency's analysis of the creditworthiness of the pledged collateral and sources of repayment for the Airport Revenue Bonds. Senate Bill 81 causes all of the pledged collateral and sources of repayment for the Airport Revenue Bonds to be transferred from the City to the Authority by operation of law. Because the City's credit and taxing authority are not pledged as collateral for the Airport Revenue Bonds, the transfer contemplated by Senate Bill 81 should not have an effect on the rating of the Airport Revenue Bonds.

Recently, the Louisiana legislature created the Louisiana Housing Corporation, as successor to the Louisiana Housing Finance Agency and another state agency related to community development. The opponents to this legislation advanced arguments that the transfer would adversely affect existing bonds of the Louisiana Housing Finance Agency and raised that issue with Moody's, the rating agency for such bonds. Moody's concluded, after meeting with the new board and financial advisor of the Louisiana Housing Corporation, that the transfer had no impact on the rating of the bonds.

Reissuance Issues.

Generally a reissuance occurs under federal tax law when there are significant modifications to the terms of a bond so that the bond ceases to be the same bond for federal tax purposes.[5]

The substitution of a new obligor can be considered a significant modification; however if the new obligor is related to the issuer and the collateral for the bonds includes the original collateral, then the modification would likely not be considered significant. Because the Authority is the successor agency to the City with respect to all of the pledged collateral and sources of repayment for the Airport Revenue Bonds, it is unlikely that the transfers contemplated by Senate Bill 81 would cause there to be a reissuance of the Airport Revenue

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[4] "Neither the credit nor the taxing power of the City are pledged for the payment of the principal or interest of the Bonds." Section 701 of the Bond Order.

[5] Section 1001 of the Internal Revenue Code and Regulation Section 1.1001-3.

Bonds. Importantly, the repayment terms, including amortization, interest rates and maturities are not being changed.

The Office of Chief Counsel to the Internal Revenue Service recently issued a memorandum considering this issue in a similar situation. The State of California, by legislative act, dissolved all of its redevelopment agencies and vested all of their authority, rights, powers, duties and obligations in successor agencies.[6] The memorandum concluded that this legislative change in the obligor of the bonds to a successor agency does not result in a reissuance.

Conclusion.

For the reasons stated above, it is our view that the creation of the Authority as the successor agency of the City with respect to the Airport pursuant to Senate Bill 81 will not impair the contractual obligations owed to bondholders of the Airport Revenue Bonds and therefore should not require consent of such bondholders.

Sincerely,

JONES WALKER, L.L.P.

By ______________________
Donald Cunningham

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6 Memorandum of Office of Chief Counsel of the Internal Revenue Service, dated May 23, 2012, Number AM2012-004.