Introduction to Volume 2

In its earliest use, beginning at the end of the Nineteenth Century, third-party closing legal opinions involved the authorization of municipal securities. Many municipalities issued bonds to support the construction of local railroad lines. The goal was to connect a community through other rail lines to some major city.

Some of these community efforts succeeded, but too many were constructed and many failed. And when that occurred, the municipality often defended against efforts to collect on the bond obligations based on the theory that the bonds were beyond the power of the municipality or were not authorized. Third-party opinions on authorization were intended to reassure bond purchasers that such defenses would not succeed in the courts.

At a later stage, third-party opinions were most frequently used in lending transactions by insurance companies (acting as long-term lenders) and banks (acting as short-term lenders). These opinion letters included “remedies opinions” that were intended to reassure the lenders that the courts would enforce the borrower’s contractual undertakings in the loan documents.

Then new opportunities arose for using third-party opinions. For example, as the issuance of securities was federally regulated, opinions were required by underwriters. See Volume 2, Chapter 7. To meet concerns of a purchaser of assets that assets “sold” might nevertheless be deemed to be part of sellers’ estate under the Bankruptcy Code, “true sale” opinions are sometimes required. See Volume 2, Chapter 1.

In an increasingly complex transactional environment, specialized opinions are involved with great frequency. In this Volume 2, attorneys with experience in specialized areas of legal opinions describe opinions that recipients frequently expect to receive in transactions involving their areas of specialization. A national customary practice has developed regarding these opinions. These specialized opinions build on and are compatible with national opinion practice generally.