

SCHOOLS:

BIDS:

CONSTRUCTION CONTRACTS:

PREVAILING WAGE LAW:

1. A school district authorizing construction of facilities which may exceed an expenditure of twenty five hundred dollars shall publicly advertise for bids on the construction; 2. After advertising for bids, the board in the exercise of sound discretion may reject any and all bids and may proceed with the construction under its own supervision and control without contracting.

OPINION NO. 441-67

December 12, 1967



Honorable Jack Curtis
State Senator - 30th District
750 North Jefferson
Springfield, Missouri 65802

Dear Senator Curtis:

This official opinion is issued in response to your request for a ruling. You posed three questions regarding public school boards of education as follows:

"1. Does a board of education have authority to carry on a school building program whatever cost may be involved, without issuing a formal contract for the construction of the building improvements?

"2. Is the attached Attorney General's opinion, dated February 20, 1952, addressed to Commissioner of Education, State of Missouri, still a valid statement of the law, to the effect that a school board is authorized to construct school buildings without entering into formal contracts and that a school board may make direct purchases of materials needed and employ necessary labor to do the work directly, and is the new Section 177.086, passed in 1965, to be construed in Mo. 1949, was construed in that opinion?

"3. Assuming that the law still permits a school board to construct school facilities by hiring its own superintendent, workmen, and purchasing its own materials directly, without entering into any formal construction contract, does Section 290.250, R.S. Mo. 1959, require the school board, in such a case, to give any notification to the

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Department of Industrial Relations or does the school board need to comply in any other respects with the prevailing wage statutes of Missouri?"

Since your first and second inquiries revolve around Section 177.086, RSMo Supp. 1965, we shall for convenience quote it here in full.

"1. Any school district authorizing the construction of facilities which may exceed an expenditure of two thousand five hundred dollars shall publicly advertise, for two successive weeks, in a newspaper of general publication, located within the county in which said school district is located, or if there be no such newspaper, in a newspaper of general publication in an adjoining county for bids on said construction.

"2. No bids shall be entertained by the school district which are not made in accordance with the specifications furnished by them and all contracts shall be let to the lowest responsible bidder complying with the terms of the letting, provided that the said school district shall have the right to reject any and all bids.

"3. All bids must be submitted sealed and in writing, to be opened publicly at time and place of the district's choosing."

We note that a separate statute on the same subject is applicable to metropolitan school districts only, namely, Section 177.161, RSMo Supp. 1965. The discussion here shall relate only to districts other than metropolitan school districts.

A brief discussion of the history of Section 8.250, RSMo 1959, will aid us in the construction of Section 177.086, supra.

Section 8.250, RSMo 1949 (Laws 1909, page 346) provided:

"No contract shall be made by an officer of this State . . . having the expenditure of public funds . . . for the erection or construction of any building, improvement, alteration or repair the total cost of which shall exceed the sum of ten thousand dollars, until publicly bids therefor are requested * * *."

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This office construed Section 8.250, RSMo 1949, to apply to public school districts. (Opinion No. 70, Phillips, 6/30/50; Opinion No. 37, Hamilton, 5/11/53 which opinions have been withdrawn because of subsequent changes in the statute.)

This office further construed Section 8.250, RSMo 1949, as not requiring public school boards of education to enter into formal contracts for construction. We held that a board of education (other than the City of St. Louis) has the authority to construct buildings by direct purchase of materials and direct employment of necessary labor without entering into construction contracts, to wit, Opinion No. 96, Wheeler, 2/20/52 (copy enclosed).

In 1957 Section 8.250 was repealed and reenacted (Laws 1957, page 726) to read as follows:

"No officer or agency of this state or of any city containing 500,000 inhabitants or over shall make any contract for the expenditure of moneys appropriated by the state in whole or in part or raised in whole or in part by taxation for the erection or construction of any building, improvement, alteration or repair if the total cost exceeds ten thousand dollars until public bids therefor are requested and solicited * * * "

This office in construing Section 8.250, as amended, has held that boards of education of school districts are not within the meaning of the phrase "officer or agency of the state". Thus, Section 8.250, RSMo 1959, does not apply to school districts, Opinion No. 139, Wheeler, 8/20/62 (copy enclosed).

With this historical background we now turn to answering your present inquiries.

In Opinion No. 96 (1952), supra, we discussed at length the opinions of several courts which held that a statute requiring public contracts to be awarded on the basis of bids does not require the public body to perform all construction through a contractor. Such a statute does not deprive the public body from effecting its building program under its own supervision and control. Section 177.086, expressly authorizes a school district to reject any and all bids.

Although Section 8.250, RSMo 1959, construed in Opinion No. 96, (1952), supra, no longer applies to school boards, the reasoning of that opinion has direct application to the present statute

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(Section 177.086) which governs bid requirements on construction by public school districts.

We are of the opinion that Section 177.086, does not require a school board to contract for construction but that the board may carry out its own building program under its own supervision and control.

There is one significant difference between Section 177.086 and Section 8.250 which should be noted. Section 8.250, provides that no contract in excess of a certain amount shall be made without soliciting bids. Section 177.086, however, provides that no school district shall authorize construction in excess of a certain amount without advertising for bids. Section 177.086, requires school districts to advertise for bids whenever they authorize construction regardless of whether or not the construction is ultimately performed directly by the school district or by contract.

Subsection 2 of Section 177.086, provides that the school district "shall have the right to reject any and all bids". Therefore after advertising for bids, the school board, in the exercise of sound discretion, may reject all bids and undertake the construction itself without contracting.

Your last inquiry relates to applicability of the prevailing wage law of this State. This office has held that the prevailing wage law, Section 290.210 et seq., RSMo, applies to and includes school districts. See Opinion No. 33, Gladden, 1/23/58 (copy enclosed). However, we have further held that the prevailing wage law does not apply to direct employees of public school districts. Opinion No. 77, Rose, 7/18/61 (copy enclosed). Also see: State ex rel City of Joplin vs. Industrial Commission of Missouri, Mo., 329 S.W.2d 687. Opinion No. 77 is directly responsive to your present inquiry.

CONCLUSION

Therefore, it is the opinion of this office that Section 177.086, RSMo Supp. 1965, applicable to all school districts except metropolitan districts requires that:

1. A school district authorizing construction of facilities which may exceed an expenditure of twenty-five hundred dollars shall publicly advertise for bids on the construction;

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2. After advertising for bids, the board in the exercise of sound discretion may reject any and all bids and may proceed with the construction under its own supervision and control without contracting.

The foregoing opinion which I hereby approve was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General

Enclosures (4) Opinion No. 96, Wheeler, 2/20/52
Opinion No. 139, Wheeler, 8/20/62
Opinion No. 33, Gladden, 1/23/58
Opinion No. 77, Rose, 7/18/61