



OFFICES OF THE

**ATTORNEY GENERAL OF MISSOURI**  
**JEFFERSON CITY**

JOHN C. DANFORTH  
ATTORNEY GENERAL

April 2, 1974

OPINION LETTER NO. 23

Honorable John Twitty  
Representative, District 130  
Room 235B, Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Twitty:

This letter is in response to your request for an opinion on the following question:

"Should the Public Schools, through school boards, superintendents, or any teacher organizations, have the privilege or right to dictate to its employees, from whom, certain named companies or individuals, they must purchase their voluntary Tax Sheltered Annuity Contracts under Section 403(b) of the Internal Revenue Code in order for the school to honor them?"

Tax-sheltered annuities for public school teachers are authorized by Section 403(b) of the Internal Revenue Code of 1954, as amended. This section provides that the amounts contributed by an employer for an annuity contract will not be taxable to the employee as compensation at the time such contributions are made (within limits set in the statute and not relevant here). The regulations accompanying Section 403(b) state that the purchase of the annuity contract for a teacher may be made as a supplement to past or current compensation, or it may be made pursuant to an agreement by the teacher with the school to take a reduction in salary in exchange for the annuity. I.R.S. Reg. §1.403(b)-1(b)(3)(i). Therefore, the statement of your question presents a misunderstanding of the laws authorizing the annuities. The annuities are purchased by the school district pursuant to an agreement with the teachers and not by the teachers themselves; it is

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this feature which allows the postponement of tax liability by the teachers.

Your opinion request inquires about the validity of certain restrictions allegedly placed on insurance companies desiring to sell annuity contracts to schools for the benefit of teachers. This office understands that the general practice of school districts is that once a board of education authorizes the procedure for the withholding of monies, companies which sponsor the tax sheltered annuity plans are then allowed to present their proposal to the teachers. Your opinion request indicates that, through the action of either the school board, the superintendent or a teachers' organization, certain insurance companies or agents are denied the opportunity to present proposals to the teachers and thereby are not allowed the opportunity to compete for the underwriting of tax sheltered annuity plans. The reason for this denial is not set out in your opinion request.

This office has recently conducted an investigation into the insurance purchasing practices of school districts relative to their fire, content, and vehicle coverages. The investigation disclosed that numerous school districts were limiting the companies which could compete for the underwriting of such coverages by establishing restrictions limiting competing companies to those which either reside in, pay taxes in or maintain offices in that school district. In response to the findings of the investigation, this office issued Advisory Guidelines which determined that such restrictions were contrary to state and federal restraint of trade laws. Opinion No. 275, Advisory Guidelines, 1973, copy enclosed.

However, your request does not indicate on what grounds specific companies are refused the opportunity to sell annuities in the district. Therefore, this office is unable to render a specific opinion on the validity of any such restrictions under state and federal laws including laws prohibiting the illegal restraint of trade.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 275,  
Advisory Guidelines, 1973