



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1998

Mr. Mike Moses
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Letter Opinion No. 98-063

Re: Whether two independent school districts may negotiate the purchase and sale of surplus school buses without competitive bidding, without the participation of the General Services Commission (RQ-1085)

Dear Commissioner Moses:

You have asked this office whether two independent school districts may contract between themselves for the purchase and sale of surplus school buses of a value in excess of \$20,000 without the involvement of the General Services Commission ("GSC") despite the requirements of Education Code section 44.031(l). We conclude that, although the selling district, pursuant to Education Code section 34.006, need no longer dispose of the buses through the GSC, the purchasing district must acquire the buses either through the GSC or through competitive bidding, pursuant to Education Code sections 34.001 and 44.031(l).

Formerly, as you explain it, "school districts were required to dispose of school buses through the General Services Commission or under rules of the commission. (Former Section 21.167, Education Code.)" Education Code section 34.006, adopted in 1995 as part of Senate Bill 1's reforms of the code, provides that, "[a] school district is not required to dispose of a school bus through the General Services Commission." Educ. Code § 34.006(b). (Under section 34.006(a), however, the district may still dispose of the bus through the GSC if it so desires.)

Section 34.006 speaks only of the disposition, not the acquisition of such buses. The purchase of school buses is governed by section 34.001, which provides, "A school district may purchase school motor vehicles through the General Services Commission or through competitive bidding under Subchapter B, Chapter 44." The relevant provision of chapter 44 is section 44.031(l), which reads, "Each contract proposed to be made by the board of trustees of a school district for the purchase or lease of one or more school buses, including a lease with an option to purchase, *must* be submitted to competitive bidding when the contract is valued at \$20,000 or more." (Emphasis added.) Reading these provisions together, the only way in which a school district can enter into a contract for the purchase of school buses with a value in excess of \$20,000 without competitively bidding the contract is by purchasing the buses through the GSC.

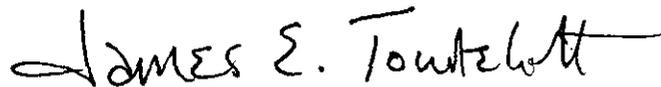
The attorneys for the purchasing school district argue that requiring GSC involvement in the instant transaction is unnecessary: "The fact that the GSC is not involved in the subject transaction, does not materially affect the analysis because it is only a difference of form and not one of substance." We cannot agree. The purchasing statute requires either purchase through GSC or through competitive bidding. The statutory language does not contemplate a third alternative.

Nor can we agree with the argument that sections 34.001 and 34.006 "create a narrow exception" to section 44.031(l). The significance in particular of section 34.006 is that it frees *sellers* from the requirement of transacting through GSC. Put as simply as possible, before section 34.006 both sellers and buyers were subject to statutory restrictions. The fact that section 34.006 does away with a restriction on sellers has no effect on the restrictions on buyers. The parties may negotiate the instant contract without competitive bidding through GSC. They may not do so without GSC.

S U M M A R Y

Two independent school districts may not contract between themselves for the purchase of surplus school buses of a value in excess of \$20,000 by one from the other without competitive bidding except by carrying out the transaction through the General Services Commission.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee