



Texas Education Agency

ID# 1361
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1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9734

September 13, 1991

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SEP 17 91

Opinion Committee

The Honorable Dan Morales
Texas Attorney General
P. O. Box 12548
Capitol Station
Austin, TX 78711-2548

Re: Request for Opinion
Constitutionality of Rider Number 30 to Central
Education Agency as found in Article III-10 through
III-11 of the General Appropriation Bill (H.B. 1, 72nd
Legis., 1st C.S., 1991)

Dear General Morales:

In 1989 the Texas Legislature enacted §§4.35 and 21.9011 of the Texas Education Code. These sections of the Code impose severe sanctions and criminal penalties upon public school employees and local school trustees for a violation of the public school competitive bidding statute which is §21.901 Texas Education Code. To assure lawful purchasing practices by Texas public school districts the Texas Education Agency has, in conjunction with the Attorney General's Office, published a competitive bidding manual and we have jointly conducted statewide inservice training. In addition, your office recently published Texas Attorney General Opinion No. DM-14 which is directly overruled or modified by the rider in question. Rider Number 30 purports to substantially alter the competitive bidding procedures that Texas school districts must follow.

To assist the public schools, and the commercial interests who are their suppliers or vendors, I am requesting your opinion regarding the constitutionality of the above-referenced Rider.

It is our position and the position of school lawyers, and professional organizations counseling school districts, that Article III, Section 35 of the Texas Constitution provides that all bills shall contain only one subject matter and that the subject of general appropriations bills is the appropriation of funds to be paid from the state treasury. See, Jensen Associates, Inc. v. Bullock, 531 S.W.2d 593.

ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY

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Also, the passage of new laws or the repeal of old ones by a general appropriation bill is not authorized by Section 35. See, Conley v. Daughters of the Republic of Texas, 151 S.W. 877 (Civ. App. 1913). See also, Op. Atty. Gen. 1951, No. V-1254, Op. Atty. Gen. 1974, No. H-321, and Op. Atty. Gen. 1983, No. MW-585. Schools are therefore receiving credible advice that this Rider is inoperative.

We respectfully request that this request for an opinion be given a high priority in order to quickly answer the many questions being posed by school districts as the 91-92 school year begins.

Sincerely,



Lichel R. Meno
Commissioner of Education

Enclosure: Rider No. 30

B-27.

TLS

August 12, 1991

**EXCERPTS FROM
SENATE FLOOR AMENDMENTS
H. B. 1
BY RUDD
GENERAL APPROPRIATIONS BILL
72ND LEGISLATURE, 1ST CALLED SESSION
1991**

CENTRAL EDUCATION AGENCY - PROGRAMS
(Continued)

in the Foundation School Program allocations due to lower student enrollment in the twelfth grade. Funding for this program is not subject to proration under Section 16.254(d) of the Education Code.

24. **SCHOOL DISTRICT ADMINISTRATIVE COST ADJUSTMENT.** Contingent upon the failure of House Bill 224 or similar legislation regarding school district administrative costs, the Commissioner of Education shall, by January 1 of each year of the biennium, determine the administrative cost per weighted student in average daily attendance for all school districts in the state for the previous school year, the statewide average of those costs, and the amounts, if any, by which each school district's administrative costs exceeded 110% of the statewide average. The definition of administrative costs shall be determined by the Commissioner, except that it must exclude the salary of a campus principal and assistant principal. To the extent that Foundation School Program allocations are prorated under Section 16.254(d) of the Education Code, it is the intent of the legislature that school districts reduce administrative costs in the current school year by an amount identified by the Commissioner, not to exceed a given district's total amount of proration. The Commissioner shall monitor district compliance with this provision and shall report his findings to the Seventy-third Legislature.

25. **PROFESSIONAL STAFF DEVELOPMENT.** The funds appropriated above in Item 26., Professional Staff Development, shall be used to provide pre-service and staff development training in technology and innovative teaching practices for public school teachers and administrators. The State Board of Education shall allocate the appropriated funds to centers for professional development and technology, created under Section 13.050 of the Education Code, or to any other entity that proposes to provide services outlined in Section 13.050 of the Code.

26. **CONTRACTED SERVICES TO SCHOOL DISTRICTS.** Out of the funds appropriated above in line 3, Education Service Centers, the Commissioner of Education shall set aside \$3,000,000 in each year of the biennium for contracted services to school districts. The Commissioner shall enter into performance contracts with education service centers or any other entity to provide technical assistance and other services to school districts in relation to accreditation, training, curriculum implementation, and...

CENTRAL EDUCATION AGENCY - PROGRAMS
(Continued)

- a. Except as provided by statute, all contracts proposed to be made by any Texas public school board for the purchase of any personal property, except produce or vehicle fuel, shall be submitted to competitive bidding for each of the six-month periods beginning September 1 and March 1 when said property is valued at \$25,000 or more.
- b. Except as provided by statute, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding when said contracts are valued at \$25,000 or more. In this section, maintenance includes supervision of custodial, plant operations, maintenance, and ground services personnel. However, this section does not apply to the construction, maintenance, repair, or renovation of any building performed by a professional custodial and/or maintenance management company when the professional custodial and/or maintenance management company is selected by a board of trustees of a school district on a competitive basis.
- c. A school district shall purchase personal property for each of the six-month periods beginning September 1 and March 1 as provided in sections (d) and (e) below if the value of the property is at least \$10,000 but less than \$25,000, unless the district elects to submit a contract for the purchase to competitive bidding.
- d. Each six-month period, the district shall publish a notice in a newspaper with general circulation in the county in which the district is located specifying the categories of personal property to be purchased and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of those categories to the district. For each category, the district shall create a vendor list consisting of each vendor that responded to the published notice and any additional vendors the district elects to include.
- e. Before the district makes a purchase from a category of personal property, the district must contact at least three vendors from the list for that category. If fewer than three vendors are on the list, the district shall contact each vendor on the list.