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**RQ-677**

March 7, 1994

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The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711

Dear General Morales:

RE: Request for Opinion

SJS  
FILE # MC-25119-94  
I.D.# 25119

An apparent conflict between two statutes has been brought to the attention of this agency, and we are unable at this point to advise the engineer registrants of this state on how to legally respond to the requests for proposals published by certain school districts.

Contracts for energy conservation measures are being considered by interested school districts under the provisions of §21.9012, Education Code. The requirements of interested contractors would include a combination of mechanical/electrical engineering design services and construction/installation services, a process in apparent conflict with the Professional Services Procurement Act, Chapter 2254, Government Code.

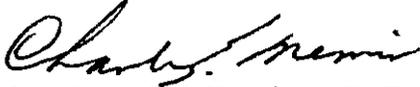
On July 24, 1990, Attorney General Opinion No. JM-1189 was issued, addressing the competitive bidding aspect of the "design/build" process of public work construction when professional architectural and engineering services are included. In part, the summary states that "A commissioners court is prohibited by article 664-4, V.T.C.S., from awarding a 'design/build' contract for the construction of a public work on the basis of competitive bidding where architectural or engineering services comprise a component of the contract." (Article 664-4, V.T.C.S., has been repealed and replaced by Chapter 2254, Government Code.)

We liken the cited provisions of the Education Code to the situation covered in JM-1189.

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Therefore, we respectfully request your opinion as to the precedents of procuring professional engineering services as governed by Chapter 2254, Government Code, over the contractual procedures set forth in §21.9012 of the Education Code.

Sincerely,



Charles E. Nemir, P.E.  
Executive Director

CEN:smg