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October 31, 1995

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Supreme Court Building
Austin, Texas 78711-2548

FILE # ML-36867-95

I.D. # 36867

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Opinion Committee

Dear General Morales:

I am writing to request your opinion regarding the application of Chapter 271 of the Local Government Code to school districts in light of recent amendments to the Texas Education Code.

Under Section 271.024, Local Government Code, if a governmental entity is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$15,000 from the funds of the entity, the bidding on the contract must be accomplished in the manner provided by Subchapter B, Chapter 271, Local Government Code. "Governmental entity" is defined to include a common or independent school district. Section 271.021, Local Government Code.

As you are aware, the Education Code was substantially rewritten by the 74th Legislature. Under the former law, all contracts for the construction, maintenance, repair or renovation of any building must be submitted to competitive bidding when the contracts are valued at more than \$15,000. Section 21.901, Education Code, repealed by Chapter 260, 74th Texas Legislature, R.S., 1995 (effective May 30, 1995).

Under current law, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period must be made by one of six methods that provides the best value to the district. Section 44.031, Education Code. The methods are: (1) competitive bidding; (2) competitive sealed proposal; (3) request for proposal; (4) catalogue purchase; (5) interlocal contract; or (6) design/build contract.

Based on the language of Section 44.031, a school district is not required to award a construction contract valued at \$25,000 or more on the basis of competitive bidding; it is one of six acceptable methods to award the contract. In light of this, I raise the following question: Is a school district required to comply with the competitive bidding procedures specified in Subchapter B, Chapter 271, Local Government Code, in awarding a construction contract?

Since Subchapter B, Chapter 271, Local Government Code, only applies if a governmental entity is required by another statute to award the contract on the basis of competitive bids, it appears that Subchapter B, Chapter 271, has no application to school district construction contracts after May 30, 1995. This reading is supported by JM-1220 (1990), which determined that the competitive bidding procedures of Subchapter B, Chapter 271, are applicable only when a separate statute requires the governmental entity to award the contract on the basis of competitive bidding.

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Under the Public Property Finance Act, Subchapter A, Chapter 271, "school district" is defined as "an independent school district, common school district, community college district, junior college district, or regional college district...." In light of this, I raise the following question: Are community college districts, junior college and regional college districts required to comply with procedures specified in Subchapter B, Chapter 44, Texas Education Code?

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Mike Moses".

Mike Moses
Commissioner of Education

MM:da