



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 21, 1988

Honorable Charles Finnell, Chairman
General Investigating Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-88-7

Dear Representative Finnell:

Thank you for your letter of November 29, 1987, requesting an opinion of this office. You ask about competitive bidding requirements for school district contracts.

Two separate statutes govern the letting of contracts by public school boards: section 21.901 of the Education Code, which applies to contracts of \$5,000 or more, and chapter 271, subchapter B of the Local Government Code (formerly article 2368a.3, V.T.C.S.), which applies to public works contracts of more than \$10,000. You ask whether a school district may divide up its contracts so as to avoid application of those statutes.

The two statutes involved do not directly address the issues you raise. Generally, though, school districts are accorded substantial discretion in these matters; as one court has explained, "[T]heir power in making such contracts is general, and in the absence of limitations they are required merely to act faithfully and in the exercise of their best judgment so as to best serve the interests of their district." Stapleton v. Trussell, 196 S.W. 269, 270 (Tex. Civ. App. - Fort Worth 1917, no writ).

Generally, the division of work into parts to avoid statutory competitive bidding requirements will cause resultant contracts to be illegal. Kelly v. Cochran Co., 82 S.W.2d 641 (1935); Fonder v. City of South Sioux Falls, 71 N.W. 618 (Tex. Comm'n App. 1955, opinion adopted), 53 A.L.R. 493. Section 271.028 of the Local Government Code, expressly states that a contract awarded in violation of that subchapter is void.

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Because we believe that a school district cannot legally divide a construction project into parts in order to avoid competitive bidding requirements, we do not address your question. See generally Texas Roofing Co. v. Whiteside, 385 S.W.2d 699 (Tex. Civ. App. - Amarillo 1964, writ ref'd n.r.e.).

We are also sending you a copy of an article from the Texas Bar Journal, which explains the application of the relevant statutes.

If we may be of further assistance, please do not hesitate to contact us.

Sincerely,



Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/PR/er
Enclosure

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