



School Business Law Update

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ATTORNEY GENERAL OPINION HOLDS LAW DOES NOT SUPPORT USE OF "PIGGYBACK" CONTRACTS TO ACQUIRE MODULAR BUILDINGS TO BE INSTALLED ON PERMANENT FOUNDATIONS

The California Attorney General issued an opinion, dated January 24, 2006, indicating the use of a "piggyback" contract under Public Contract Code Section 20118 is not an appropriate vehicle for acquisition by school districts of "modular buildings" to be affixed to permanent foundations.

Public Contract Code section 20118 [20652 for community college districts] provides a limited exception from competitive bidding requirements to acquire "materials, supplies, equipment and other personal property" through another public agency, where that agency has properly advertised, bid and awarded a contract permitting districts to lease or purchase the same items on the same terms and conditions. The Attorney General believes that modular buildings to be installed on a permanent foundation do not fall within the scope of "personal property" for purposes of the piggyback exception. The opinion also notes that the statute does not authorize the purchase or lease of property directly from the vendor.

The opinion leaves open the question of "relocatable" buildings acquired through use of an appropriate piggyback contract. It continues to be our view that, depending on the circumstances and the presence and nature of any associated installation services, a relocatable building can be properly acquired via piggyback. We note further that the opinion does not define what is a modular building, nor does it address authorization for K-12 districts to acquire equipment and personal property without bidding under the separate authority of Education Code section 17540.

Obviously, the Attorney General's opinion may have a significant impact on standard school facilities-industry practices. We are informed that the State Allocation Board, in light of the Attorney General's opinion, may decide at its next meeting to cease funding acquisitions of modular buildings acquired by K-12 districts through piggyback contracts. We are informed that this may be limited to modular structures constructed on site, and not those shipped intact and simply connected on site.

Our office continues to research the impact of the opinion and will seek clarity from OPSC. We advise districts to use caution at this point in decisions regarding use of piggyback contracts to acquire modular buildings. If you have any questions concerning this matter, feel free to contact me or the other members of our business practice group.

—Bill Hornback

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