



## LAW UPDATE SCHOOL BUSINESS

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### CONFUSION REGARDING USE OF PIGGYBACK CONTRACTS FOR PROCUREMENT OF MODULAR BUILDING COMPONENTS

As you know, the Public Contract Code permits a school district to “piggyback” on a validly issued contract of another agency to obtain equipment, materials, supplies and other personal property without further competitive bidding. (Public Contract Code section 20118.) The statute is commonly interpreted to exclude the procurement of construction services, unless the construction services can be said to be incidental to the piggyback procurement.

For several decades, districts have used the piggyback exception for the purchase of modular building components without bidding. Basing its position on an Attorney General Opinion issued in January 2006, the Office of Public School Construction (OPSC) has recently determined that the Public Contract Code prohibits districts from doing so. Earlier this year, our office had to intervene on behalf of a district whose funding was being held back based on this new interpretation. Ultimately that district’s funding was released on what we understand was a one-time waiver, but OPSC maintained its new interpretation. On July 7, 2021, Lisa Jones of the California Department of General Services issued an email blast “reminding” all school districts and county superintendents of schools in California of this piggyback prohibition for modular building component acquisition.

OPSC’s new interpretation goes against the longtime understanding and practice of school districts. Our office is working on a solution with other attorneys in California, as well as Tom Duffy of the California Coalition for Adequate School Housing, on a solution. In the meantime, we recognize that many districts have completed modular projects and may be waiting for OPSC to release funding. If you are one of those districts, please call us so that we can assist you, interface with OPSC if needed, and help you determine the dollar impacts on your projects should this new interpretation prevail and OPSC ultimately deny funding. We will issue updates on this topic as we work toward resolution.

~ Candace B. Neal

*School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*