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OPINION	:	No. 79-716
	:	
of	:	October 30, 1979
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SUBJECT: MOSQUITO ABATEMENT DISTRICT BOARD—A mosquito abatement district board may construct an office building for district purposes through the use of its own employees.

The Honorable Darrell W. Larsen, County Counsel of Sutter County, has requested an opinion on the following question:

May a mosquito abatement district board construct an office building for district purposes through the use of its own employees?

CONCLUSION

In the exercise of sound discretion, a mosquito abatement district board may construct an office building for district purposes through the use of its own employees.

ANALYSIS

We are informed that the Sutter-Yuba Mosquito Abatement District Board wishes to construct an office building on its property for the exclusive use of its staff. The total cost of construction would be approximately \$80,000. The question presented for analysis is whether the office may be constructed by “force account.”¹ We conclude that it may.

Mosquito abatement districts in California are organized under the provisions of Health and Safety Code sections 2200.2360² for the purpose of exterminating mosquitoes, flies, and other insect pests. (§ 2270, subd. (a), (b); 8 Ops. Cal. Atty. Gen. 266, 267 (1946).)

The board of a mosquito abatement district may exercise numerous powers in carrying out the district’s statutory purposes. Section 2270 enumerates the powers as follows:

“The district board may:

“(a) Take all necessary or proper steps for the extermination of mosquitoes, flies, or other insects either in the district or in territory not in the district but so situated with respect to the district that mosquitoes, flies, or other insects from such territory migrate into the district.

“(b) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes, flies, or other insects either in the district or in territory not in the district but so situated with respect to the district that mosquitoes, flies, or other insects from such territory migrate into the district.

“(c) *Purchase such supplies and materials, employ such personnel and contract for such services as may be necessary or proper in furtherance of the objects of this chapter.*

“(d) *If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain, necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights-of-*

¹ The term “force account” is generally used to describe the use of a public agency’s own “forces” to construct a public project. (See *Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 64; *Jackson v. Pancake* (1968) 266 Cal. App. 2d 307, 311.)

² All unidentified section references hereinafter are to the Health and Safety Code.

way, easements, property, or material necessary for any of those purposes.

“(e) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

“(f) Enter upon without hindrance any lands, within or without the district, for the purpose of inspection to ascertain whether breeding places of mosquitoes, flies, or other insects exist upon such lands; or to abate public nuisances in accordance with this article; or to ascertain if notices to abate the breeding of mosquitoes, flies, or other insects upon such lands have been complied with; or to treat with appropriate chemical or biological control agents any breeding places of mosquitoes, flies or other insects upon such lands.

“(g) Sell or lease any land, rights-of-way, easements, property or material acquired by the district. “Every sale of real property pursuant to this subdivision shall be made to the highest bidder at public auction after five days’ notice given pursuant to Section 2204 of this code, and at such place within the district as the district board shall specify.

“(h) Borrow money in any fiscal year and repay it in the same or in the next ensuing fiscal year. The amount borrowed in any fiscal year is not to exceed fifteen cents (\$0.15) on each one hundred dollars (\$100) of assessed valuation of property in the district.

“(i) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board not to exceed 5 percent per year, payable annually or semiannually as the board may prescribe.

“(j) Provide a civil service system for any or all employees of the district.

“(k) Assess civil penalties as determined by the discretion of the board, but not to exceed \$500 per day for each day that a notice or hearing order to abate a nuisance has not been complied with. “Any sum which may be collected shall become part of the district’s general fund to be used solely for vector control purposes for the entire district.

“(1) Do any and all things necessary or incident to the powers granted by, and to carry out the objects specified in, this chapter.” (Emphasis added.)

In answering the question presented, we must closely examine section 2270, since a mosquito abatement district board “has only those powers expressly enumerated by law and those implied powers which are necessary to the exercise of the powers granted.” (6 Ops. Cal. Atty. Gen. 12, 13 (1945).)

No express provision in section 2270 allows a district to construct an office building for its own use. In fact, no provision specifically authorizes a district to acquire an office building by purchase, lease, or in any other manner. However, it may reasonably be concluded that a district requires an office and storage facilities in order to perform its statutory responsibilities. From the provisions of section 2270, it is apparent that a district may have need of an office building from which to purchase supplies and materials (subd. (d)), purchase property (subd. (d)), make contracts (subd. (e)), sell or lease land (subd. (g)), borrow money (subd. (h)), and issue warrants (subd. (i)).

In *Skreden v. Superior Court* (1975), 54 Cal. App. 3d 114, 117–118, the Court of Appeal concluded that a mosquito abatement district had the power to acquire land for the purpose of an administrative office and a corporation yard, even though section 2270 “does not expressly refer to the acquisition or condemnation of property for office and corporation yard purposes.” It stated as its rationale: “We apprehend that it is reasonable to conclude that a mosquito abatement district requires an office and a corporation yard in order for it to perform the specific objectives for which it was formed.”

In 8 Ops. Cal. Atty. Gen. 266, 267 (1946), we considered whether a mosquito abatement district could dispose of land no longer needed for district purposes. We analyzed the situation thusly:

“The principal object of the district, of course, is the eradication and extermination of pests. The acquisition of real property for the storage of its equipment is purely incidental; and when, as in this case, it is advisable to dispose of a site used for the storage of property and equipment and acquire another site more suitable for the same purpose, we believe that the power to sell the old site and acquire a new one is included within the powers necessary to carry out the powers conferred by the Act”

In 58 Ops. Cal. Atty. Gen. 1, 9–10 (1975), we examined whether the Avocado Advisory Board could construct an office building for its own use. We concluded that such a structure could be built, even though no statute gave the board express authority to own real or personal property.

We thus determine that an office building may be acquired by a mosquito abatement district in order to perform its statutory duties. We next consider the possible methods by which such acquisition may be made. The possibilities include obtaining the building by purchase, condemnation, lease, or construction. If by construction, the possibilities would include a competitive bidding procedure, an informal contractual agreement with a private contractor, employment of day labor specifically for the construction, or use of employees already performing other duties for the district.

If the statutory scheme applicable to mosquito abatement districts were to specify the manner of acquisition, the answer would be to look to the governing provisions. (See 59 Ops. Cal. Atty. Gen. 242, 249 (1976); 38 Ops. Cal. Atty. Gen. 92, 93 (1961).) Some public agencies, for example, are allowed to construct building projects but are required to use a competitive bidding procedure (see Gov. Code § 37902; Harb. & Nav. Code § 6080), while others are permitted to use their own employees (see Harb. & Nav. Code § 6273), and others may use their own employees only in limited situations. (See Gov. Code § 61626.5.)

Here, we have found no statutory authorization or mandate with regard to the manner of acquisition of office buildings by mosquito abatement districts. Clearly, the phrases “acquire by purchase, condemnation, or by other lawful means . . . property, or material necessary (§ 2270, subd. (d)) and “Do any and all things necessary or incident to the powers granted by, and to carry out the objects specified in, this chapter” (§ 2270, subd. (1)) are sufficiently broad to cover construction, purchase, lease, or condemnation.

With regard to construction by competitive bidding, in 38 Ops. Cal. Atty. Gen. 92, 93 (1961), we stated the general rule concerning when a competitive bidding procedure is or is not required for a public construction contract:

“In order to create a valid public contract, it is necessary that the elements essential to a good contract be present. Such contract of a public agency should be properly authorized or approved. The statutory ordinance or charter provisions as to the methods of approval and the persons by whom such approval is given are controlling. Any provisions of ordinances, statutes or charters, with reference to specifications, solicitations for bids, the bidder to whom the contract is to be awarded and the form of the contract must be complied with. Where there is a requirement in the statute, charter or ordinance for advertising and public bidding, a public contract made in violation or evasion of such requirements is, generally, invalid and imposes no obligation or liability on the public body. *In the absence of a requirement in the applicable statute, charter or ordinance, there is no legal requirement or necessity for a public body to let any contract under competitive bidding*

or to award the contract to the lowest bidder, the lowest responsible bidder, or whatever other type of bidder is pointed to in the applicable statute, charter or ordinance as the person to whom the contract is to be awarded (Davis v. City of Santa Ana, 108 Cal. App. 2d 669). However, where competitive bidding is not required, the public body or any officer authorized to make contracts on its behalf may resort to competitive bidding to obtain the most favorable results for the public.” (Emphasis added.)

We again reviewed the matter in 59 Ops. Cal. Atty. Gen. 242, 244–245 (1976) where we observed:

“There is no constitutional requirement that public works projects be performed by contract let by means of competitive bidding. In the absence of any statutory requirement any reasonable means can be used to accomplish a public works project. However, where a mode of contracting is specified it must be followed unless an exception applies. *Zottman v. San Francisco*, 20 Cal. 96 (1862); *Reams v. Cooley*, 171 Cal. 150, 153–154 (1915); *Miller v. McKinnon*, 20 Cal. 2d 83 (1942); *Santa Monica Unified Sch. Dist. v. Persh*, 5 Cal. App. 3d 945, 952 (1970).

“In California, cities, counties and some districts must contract for public construction projects exceeding a specified sum through competitive bids. If particular cities or counties are charter cities or counties, the applicability of competitive bid requirements would be determined by reference to the particular charter.”

In *Swanton v. Corby* (1940), 38 Cal. App. 2d 227, 229, the Court of Appeal stated, “It is well settled in California that a municipality may purchase supplies and materials and hire labor without advertising for bids if the law or charter under which it is organized and exists does not require the contract for such supplies, materials or labor to be let to the lowest bidder after advertising for bids. [Citations.]”

Although a mosquito abatement district need not follow competitive bidding procedures in constructing an office building, the question remains as to whether the building may be constructed with district employees. A district may not have employees with expertise in office building construction. The building and repair of dikes, levees and canals (§ 1170, subd. (d)) would not necessarily produce the requisite experience for constructing an office building; civil service classification problems might also arise.

Employee expertise would be one of the factors to be considered by the district board in determining whether to lease, purchase, or build the necessary facilities and the

manner of construction in the latter event. We have previously stated that the exercise of sound discretion is the sole requirement in the undertaking of such a venture. (58 Ops. Cal. Atty. Gen. 1, 9–10 (1975).) We reached the same conclusion in 59 Ops. Cal. Atty. Gen. 242, 244 (1976); where we stated, “In the absence of any statutory requirement any *reasonable* means can be used to accomplish a public works project.” (Emphasis added.)

We conclude that in the exercise of sound discretion, a district board may use its own employees to construct a district office building under the general provisions of subdivisions (d) and (1) of section 2270. We are aware of no law that would prohibit district construction by “force account.” It is simply one method that is available to a district board wishing to acquire an office building. Our conclusion is consistent with the case authority in the field and with our own opinions spanning several decades.

In particular, in 11 Ops. Cal. Atty. Gen. 242 (1948), we considered whether a public cemetery district could employ day labor to construct a building. The governing statute merely stated that “the district may do all acts necessary or proper for the carrying out of the purposes of this part.” While we observed that “the statute does not specifically set forth the manner in which the contracts of a district are to be executed or designate how the work is to be performed,” we concluded,

“In the absence of a controlling statutory provision, as here, competitive bidding is not essential to the validity of a contract. (See *Perry v. City of Los Angeles* (1909) 157 Cal. 146, 106 Pac. 410; *Swanton v. Corby* (1940) 38 Cal. App. 2d 227, 100 P. 2d 1077.)

“It also follows that the district may, as an alternative, directly employ labor to construct the building.”

In 33 Ops. Cal. Atty. Gen. 149 (1959), we examined whether a mosquito abatement district, intending to construct a building by day labor, would be subject to county building ordinances. We concluded that such a district would be subject to county ordinances of general application but would be exempt from the payment of permit fees. While we noted that “in the field of construction, the statute is completely silent containing neither standards nor restrictions” (*Id.*, at 150), we accepted the assumption that a district could construct a building through the use of day labor.

Against this history of statutory interpretation, the legislature has not seen fit to amend the applicable statutes to require, for example, a competitive bidding procedure for constructing district facilities. We must therefore assume that in such matters the exercise of sound discretion by a district board is presently considered sufficient by the Legislature. (See *Southwest Explor. Co. v. County of Orange* (1955) 44 Cal. 2d 549, 554; *Lucas v.*

Board of Trustees (1971) 18 Cal. App. 3d. 988, 991; *Meyer v. Board of Trustees* (1961) 195 Cal. App. 2d 420. 431–432.)

Finally, we note that the district must comply with Government Code sections 54201–54205 in the purchasing of materials, supplies, and equipment for the new office building.

The conclusion to the question presented, therefore, is that in the exercise of sound discretion a mosquito abatement district board may construct an office building for district purposes through the use of its own employees.
