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State of California

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OPINION	:	No. 79-915
	:	
of	:	<u>February 20, 1980</u>
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SUBJECT: SALE OF PRISON VOCATIONAL BY-PRODUCTS—The Department of Corrections may not sell by private sale or auction by-products of prison vocational programs, such as furniture and rebuilt vehicles.

The Honorable J.J. Enomoto, Director of Corrections, has requested an opinion on the following question:

May the Department of Corrections sell by-products of prison vocational programs, such as furniture and rebuilt vehicles by private sale or auction?

CONCLUSION

The Department of Corrections may not sell by private sale or auction by-products of prison vocational programs, such as furniture and rebuilt vehicles.

ANALYSIS

We are advised that certain vocational training programs conducted for the benefit of inmates by the Department of Corrections involve the construction by the inmates of wood and metal goods, such as furniture and rebuilt vehicles. The Director of Corrections has asked whether such by-products of prison vocational programs may be sold by private sale or auction.

We conclude that such by-products may not be sold by private sale or auction. The applicable statute is Penal Code section 2876, which provides:

“It shall be unlawful for any person to sell, expose for sale, or offer for sale within this State, any article or articles manufactured wholly or in part by convict or other prison labor, except articles the sale of which is specifically sanctioned by law.

“Every person selling, exposing for sale, or offering for sale any article manufactured in this State wholly or in part by convict or other prison labor, the sale of which is not specifically sanctioned by law, is guilty of a misdemeanor.”

We have reviewed the various provisions of the Penal Code relating to the employment of prisoners (§§ 2700–2792) and the sale of prison-made goods (§§ 2870–2877) and have found no authorization for the sale of by-products of prison vocational programs to private parties. We are aware of no other provision of law which would authorize such a sale.

We have also considered the possibility that the reference to “prison labor” in Penal Code section 2876 is limited to prison work programs as part of the correctional industries program (see Pen. Code, § 2700 *et seq.*). However, we find such an interpretation of section 2876 unsupportable in view of Penal Code section 2877, which provides:

“The director may provide for the manufacture of small articles of handiwork by the prisoners out of raw materials purchased by the prisoners with their own funds or funds borrowed by the Inmates’ Welfare Fund, or from raw materials furnished by the director without compensation therefor as provided in this section which articles may be sold to the public at the state prison, in public buildings, at fairs, or on property operated by nonprofit associations. State-owned property shall not be given to prisoners for use under this section, unless all proceeds from the sale thereof shall be deposited in the Inmates’ Welfare Fund. The director may provide that all or a part of

the sale price of all articles manufactured and sold under this section be deposited to the account of the prisoner manufacturing the article.”

Thus, section 2876 bans the sale of any articles manufactured by convict labor and section 2877 makes an exception for small articles of handiwork made by prisoners. Apparently the Legislature believed that the express authorization of section 2877 was necessary to exempt such articles from the proscription of section 2876. Consequently, it appears clear that section 2876 applies to all types of labor by prisoners.

The purpose of the prohibition of the sale of prison-made goods is to prevent products made by prisoners from entering into competition with products made by private industry. (*Cf.* Cal. Const., art. XIV, § 5; § 8 Ops. Cal. Atty. Gen. 297 1946), 8 Ops. Cal. Atty. Gen. 10 (1946).)

A recent example of legislative concern regarding the scope of sale of prison made goods is found in Penal Code section 2873, which as amended by Statutes of 1976, chapter 738, section 3, provided in part:

“Products of California state correctional industries may be offered for sale to inmates of the Department of Corrections through canteens on the same basis as commodities purchased from commercial sources.

However, that portion of section 2873 was amended by Statutes of 1979, chapter 360, section 1 to provide.”

“Products of California state correctional industries may be purchased by state agencies to be offered for sale, in a manner authorized by the Correctional Industries Commission, to inmates of the Department of Corrections and to any other wards of the state who reside in state operated institutional facilities. Products to be sold to inmates and wards of the state shall, to the maximum extent, be designed to meet the express needs of such institutional residents.” (Emphasis added.)

This recent statutory amendment evidences the Legislature’s continuing intention to restrict the sale of articles made by prisoners. Accordingly, we conclude that, in the absence of an express statutory authorization, the Department of Corrections may not sell by private sale or auction the by-products of prison vocational programs, such as furniture and rebuilt vehicles.
