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OPINION	:	No. 81-711
of	:	OCTOBER 29, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Robert D. Milam Deputy Attorney General	:	

THE HONORABLE CAMERON L. REEVES, COUNTY COUNSEL, COUNTY OF LAKE, has requested an opinion on the following question:

May a county under 500,000 in population remodel its courthouse at a cost exceeding $10,000 by contracting with a "consultant" without solicitation of bids and then employing unemployed craftsmen and laborers referred by the State Employment Development Department to perform the work?

CONCLUSION

A county under 500,000 population may not remodel its courthouse at a cost exceeding $10,000 by contracting with a "consultant" without solicitation of bids and then employing unemployed craftsmen and laborers referred by the State Employment Development Department to perform the work.

ANALYSIS

A county with a population of less than 500,000 is considering remodeling its county courthouse by means of a plan whereby the county would employ a "consultant," by contract without soliciting bids, to oversee the project. The, consultant would provide plans to the county, submit a list of labor, materials and equipment to the county, interview prospective employees for the project, and organize and direct the work force in the actual construction. The work force would consist entirely of unemployed construction tradespersons registered with the State Employment Development Department ("EDD"). Based upon the recommendations of the consultant, the county would hire the work force and purchase the equipment and supplies for the project. The cost of the project exceeds $20,000. The question is whether this plan violates the statutory requirements for competitive bidding.

There is no constitutional requirement that public works projects be performed by contract let by means of competitive bidding. In the absence of statutory requirement, any reasonable means can be used to accomplish a public works project. (*Swanton* v. *Corby* (1940) 38 Cal. App. 2d 227, 229; 59 Ops. Cal. Atty. Gen. 242, 244 (1976).) When competitive bidding is required, a contract made without solicitation of bids is illegal (*Miller* v. *McKinon* (1942) 20 Cal. 2d 83, 87–88), and the county is barred from using its own employees without solicitation of bids (*Killeen* v. *City of San Bruno* (1976) 56 Cal. App. 3d 479, 482).

As was stated in the case of *Reams* v. *Cooley* (1915) 171 Cal. 150 at page 154:

> "Where the statute prescribes the only mode by which the power to contract shall be exercised the mode is the measure of the power. A contract made otherwise than as so prescribed is not binding or obligatory as a contract and the doctrine of implied liability has no application in such cases."

Prior to 1971, all counties were bound by the public bidding requirements of article 5 (commencing with § 25450) of chapter 5 of division 2 of title 3 of the Government Code.[1] In 1971 the Legislature added article 9 (commencing with § 25540) of chapter 5 of division 2 of title 3 of the Government Code which applies only to counties with a population of less than 500,000. (Stats. 1971, ch. 1310.) Article 9 generally requires that projects "for the erection, improvement, and repair of public buildings and works" (§

[1]All unidentified section references are to the Government Code.

25540.5, subd. (a)) "shall be let to contract by informal bidding procedures" if the cost thereof is between $4,000 and $10,000 and "shall, in all instances, be let to contract by formal bidding procedure" if the cost thereof is $10,000 or more § 25541.5).

It is clear that the proposed project is a public project within the meaning of section 25540.5 because it is for the ". . . improvement, and repair of public buildings. . . ." It is also clear that such public projects must be let to contract when the cost of the project is over $10,000. (§ 25541.5.) Thus, if the competitive bidding statute is applicable, the county would be barred from using its own employees on the project. The only exceptions to this is that county employees may be utilized on the project if there is a solicitation of bids and no bids have been received (§ 25544), or after the bids have been twice rejected (§ 25544), or after the first rejection when the appropriate resolution has been passed by the board of supervisors (§ 25544.5). In the instant case no solicitation of bids is contemplated.

Section 25540 provides:

> "Notwithstanding any other provision of law, every county, whether general law or charter, containing a population of less than 500,000 *shall employ bidding procedures* on public projects as provided in this article. *This article shall be liberally construed to effect its purposes*. In the event of conflict with any other provision of law relative to bidding procedures, the provisions of this article shall apply." (Emphases added.)

However, there is an express exception to the requirements of article 9. Section 25547 provides:

> "The provisions of this article *shall not apply* to the construction of any public building used for facilities of juvenile forestry camps or juvenile homes, ranches, or camps established under Article 15 (commencing with Section 880) of Chapter 2, Part 1, Division 2 of the Welfare and Institutions Code, if a major portion of the construction work is to be performed by wards of the juvenile court assigned to such camps, ranches, or homes; or to public projects employing prisoners pursuant to Section 25359 and *public projects involving persons engaged in federal, state, or county job or work training programs*." (Emphases added.)

In resolving this question we must construe the language of section 25547. We have found no case that has determined the meaning of the critical language of this section and thus must turn to the rules of statutory construction used by the courts. The

applicable rules were summarized in *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230 as follows:

> "We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose; a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Citations and quotations omitted.)

The word "program" is defined by the dictionary as a "plan of procedure: a schedule or system under which actions may be taken toward a desired goal." (Webster's Third New Internat. Dict., unabridged (1961) p. 1812.) The statutory exclusion applies only to "*federal, state*, or *county* job or work training programs." Such governmental programs as the Work Incentive Program (42 U.S.C. § 2641 *et seq*.), the Job Opportunities Program (42 U.S.C. § 3246 *et seq*.), and the Comprehensive Employment and Training Act (29 U.S.C. § 501 *et seq*.) come to mind. These are programs which are specifically authorized and defined by legislative enactments. The assistance provided to unemployed workers by EDD to find work with private as well as public employers is not referred to as a "program" in common parlance and more specifically is not ordinarily described as a governmental job or work training program. When the Legislature excluded federal, state, or county job or work training programs from the bidding requirements for public works projects, we believe it intended to exclude only those governmental programs which are independently established by legislative enactments.

We conclude that a county under 500,000 in population may not lawfully remodel its courthouse at a cost exceeding $10,000 without competitive bidding by contracting with a consultant who will select and supervise unemployed craftsmen and laborers who are referred by EDD and hired by the county to do the work.

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