

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 82-104
	:	
of	:	<u>MAY 20, 1982</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Victor D. Sonenberg	:	
Deputy Attorney General	:	
	:	

THE HONORABLE JOHN GARAMENDI, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following questions:

1. Does a school district have the authority to enter into an exclusive contract with a professional photographer to provide the photographs for a school yearbook?
2. In return for the award of such an exclusive contract, may a school district require the photographer to give a rebate or make contributions of services or supplies to the school district?

CONCLUSIONS

1. A school district has the authority to enter into an exclusive contract with a professional photographer to provide the photographs for a school yearbook.

2. In return for the award of such an exclusive contract, a school district may require the photographer to give a rebate or make contributions of services or supplies to the school district.

ANALYSIS

In connection with the present question concerning the extent of a school district's contracting authority, we are informed that school officials will often arrange to have the photographic work for a student yearbook performed by a professional photographer pursuant to an agreement whereby the photographer is given the exclusive right to take the photographs of students that will be used in the yearbook. In return for this exclusive right, the photographer furnishes the photographs to the yearbook without charge to the school district or to the students being photographed. The photographer also furnishes to the school without charge various supplies related to the process of placing the photographs in the yearbook. In addition, or as an alternative, he may make a cash payment to the school. The value to the photographer of the exclusive right is the enhanced opportunity to sell individual graduation pictures to the senior students who are being photographed for the yearbook.¹ This arrangement is nothing more nor less than a simple contract in which the photographer receives a valuable right to provide all the graduates' photographs to be used in the yearbook in consideration for agreed services and cash payments to the school. The yearbook may be an activity directly administered by school district personnel, or it may be a project of the school's student body association. At any rate, we assume that the contract in question is between the photographer and the school district.² The questions that we are asked to resolve arising from such a contract are whether an exclusive contract is authorized and whether in such circumstances the photographer can be required to make a cash payment or furnish without charge photographic services and related supplies to the school district.³

¹ The information furnished to us does not indicate that such exclusive arrangements in any way obligate the student to purchase his personal graduation pictures from the yearbook photographer, and we assume for purposes of this opinion that the students are under no such obligation.

² See Education Code section 48930 which, while authorizing students to form student body associations, subjects such associations to the school district's control and regulation; and see *Lehmuth v. Long Beach Unified Sch. Dist.* (1960) 53 Cal.2d 544 where the Supreme Court noted that "the student body, though a separate entity in one sense, was subject to . . . [school district personnel] supervision." (*Id.*, at p. 552.)

³ Generally speaking, it is illegal for a public official to accept a gratuity for the performance of official acts. (Pen. Code, § 70; see also Pen. Code, §§ 7(6), 68; and Ed. Code, §§ 35230, 60072.) We thus assume that the transaction in question contemplates cash, supplies and services being furnished to a school district and not anything of value being furnished to individual school

At the outset these questions require a consideration of the range of a school district's authority in general. Until recently the scope of such authority was limited by the proposition that a school district had only those powers that were conferred by a specific statutory grant. (*Elder v. Anderson* (1962) 205 Cal.App.2d 326, 333; *Grasko v. Los Angeles City Board of Education* (1973) 31 Cal.App.3d 290, 301.) However, in 1972 an amendment to section 14 of article IX of the State Constitution was enacted which empowered the Legislature to:

" . . . authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

This provision was implemented by the Legislature with the enactment in 1976 of section 35160 of the Education Code⁴ which provides:

"On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established." (See also § 72233 conferring the same authority upon community college districts.)

Thus, so long as a particular action of a school district is consistent with school district purposes and is not in conflict with any law, it is not necessary to find authority of such action in a specific statute. (60 Ops.Cal.Atty.Gen. 184, 186 (1977); *accord*, 63 Ops.Cal.Atty.Gen. 851, 852-853 (1980); 60 Ops.Cal.Atty.Gen. 177, 178-179, 180 (1977); see also 60 Ops.Cal.Atty.Gen. 353, 353-354 (1977) and 61 Ops.Cal.Atty.Gen. 75, 75-76 (1978) concerning a similar expansion of the authority of community college districts.)

As to whether the contract in question here is consistent with school district purposes, it would appear that the rituals and ceremonies associated with the event of graduation are undoubted components of the educational functions of a school district, and that such rituals and ceremonies traditionally find embodiment in the form of a yearbook. Furthermore, the process of producing a yearbook ordinarily affords students valuable

officials for their personal gain. We also assume that the term "rebate" as used in the opinion request has reference to a cash payment, as opposed to supplies and services, being provided to the school district.

⁴ Hereafter all section references are to the Education Code unless otherwise indicated.

training in journalism and English. (See 12 Ops.Cal.Atty.Gen. 53 (1948).) Accordingly, actions directed toward the production of a graduation yearbook would be an action consistent with and "not in conflict with the purposes for which school districts are established." (§ 35160.) Nor are we aware of any law that precludes a school district from making contracts for the acquisition of services and supplies for yearbooks. Therefore, as a general proposition, a school board would have the authority pursuant to section 35160 to enter into a contract related to producing a yearbook.⁵ The question we reach here, however, is whether the particular terms of the contract under consideration are in conflict with any law.

The first question arising from such terms is whether a district can contract for photographic services and supplies exclusively with one provider. As to this question, we note initially that dealing exclusively with one provider for the acquisition of a given set of services or supplies is, in effect, expressly contemplated by the general statute governing school district contracts for supplies and services. This statute requires that such contracts be awarded to the "lowest responsible bidder." (§ 39640; see also § 40000 concerning the purchase of "standard school supplies" from the "lowest responsible bidder.") But even assuming that the contract in question does not come within the competitive bidding statute because it does not involve district expenditures of the specified dollar amounts,⁶ there is no inherent principle of law requiring a district to fragment a single procurement transaction among a number of providers as opposed to dealing with a single provider. The authority of a school district to make an exclusive contract was recognized in 13 Ops.Cal.Atty.Gen. 97 (1949) where this office concluded that a school district could grant exclusive rights to a broadcasting company to broadcast high school football games.

The achievement of uniformity in quality and appearance of the pictures contained in a yearbook is an appropriate objective. Thus a school district could reasonably conclude that quality standards could more effectively be controlled and confusion could be minimized if the producers of the yearbook dealt exclusively with a single photographer,

⁵ See section 39656 authorizing the school board to delegate its power to contract to "its district superintendent, or to such persons as he may designate"

⁶ This statute applies to the letting of contracts which involve expenditures of "more than . . . \$12,000 . . . for work to be done or more than . . . \$16,000 . . . for materials or supplies to be furnished, sold, or leased to the district" (§ 39640.)

In this opinion, while we assume that all bidding requirements are complied with, we do not pass upon the question of whether the competitive bidding statute is applicable to transactions of the type under consideration here which do not involve an expenditure of district funds. (See *California School Emp. Assn. v. Sequoia etc. School Dist.* (1969) 272 Cal.App.2d 98, 101, 110 fn. 9.)

rather than being required to accept work from a number of different sources. (See *People v. Shepherd* (1977) 74 Cal.App.3d 334, 338, holding that a city could limit selling activities on its stadium grounds to preauthorized commercial vendors as a means of maintaining control over the methods of such activities and to avoid annoyance and inconvenience to the public using such grounds.) It is therefore our opinion that where a school district reasonably concludes that dealing with a single photographer is in the best interests of the district, it may enter into an exclusive contract with such photographer.

The other question arising from the school district's contract with the photographer is whether, in return for granting him an exclusive status, the school district can require the photographer to furnish to it a cash payment or services and supplies. In essence, such a transaction is nothing more than a simple contract: The school district contract provides the photographer with an advantageous opportunity to sell graduation pictures, and in exchange the school district receives photographic services and supplies and possibly a cash payment. It is generally recognized that exclusive commercial opportunities received by a business enterprise from a public agency ordinarily constitute a valuable interest. (See 13 Ops.Cal.Atty.Gen. 97, *supra*, at p. 98; 12 McQuillin, *Municipal Corporations* (3d ed. 1970 rev.) § 34.01, p. 7; *id.*, § 34.31, p. 86.) It is thus appropriate that in return for its granting a valuable interest the agency should require that something of value be granted to it in return. (See *id.*, § 34.01, p. 7.) Accordingly, as a matter of principle, it would appear that a school district could require a photographer to furnish some valuable consideration to the district in return for the exclusive right to take the pictures for the yearbook. Often consideration consists of the payment of money. The only issue here is whether such consideration may be in the form of something of value other than money. Pertinent to this issue is the decision in *Mansfield v. District etc. Assoc.* (1908) 154 Cal. 145. In that case the Supreme Court held that a district agricultural association was not confined to selling its property for money but could transfer such property in return for legal services. In quoting from a United States Supreme Court decision the Court declared: ". . . 'If they possess the power to sell for money, we are pointed to no express provision of law that restricts them from selling for money's worth. . .'" (*Id.*, at p. 149.)

In the present situation we are likewise aware of no law which restricts a school district from requiring the furnishing of services and supplies rather than money in return for its grant of a valuable right. Thus in view of section 35160 empowering a school district to take any action not inconsistent with law or with the purposes for which school districts are established, we conclude that a school district may enter into a contract with a photographer which awards him the exclusive right to take the yearbook photographs and which in turn requires him to make a cash payment or furnish to the district without charge photographic services and supplies.
