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Robert R. Corbin

January 16, 1984

Mr. James L. Stroud
Stompoly & Even, P.C.
Attorneys at Law
P.O. Box 3017
Tucson, AZ 85702

Re: I84-010 (R83-148)

Dear Mr. Stroud:

Pursuant to A.R.S. § 15-253.B. we decline to review your opinion dated October 18, 1983, to the Tucson Unified School District concerning the applicability of the competitive bidding process to services selected and paid for by students.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC/VBW/pd

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October 18, 1983

R83- 148

Mr. Felizardo Valencia, Director
Legal and Research Services
TUSD
Post Office Box 40400
Tucson, Arizona 85717

Dear Mr. Valencia:

This firm has considered a question which you posed regarding selection of a yearbook publisher, photographer and graduation announcement and invitation suppliers. Our opinion is as follows:

QUESTION

Does the practice of having a high school committee to select a single yearbook photographer, a single yearbook publisher and a single graduation announcement and invitation supplier violate requirements for formal bidding?

ANSWER

No, subject to the following discussion.

FACTS

Each year at each TUSD high school, the students, with assistance from the administration, form a "Yearbook Committee" which selects a printer, a photographer, and a graduation announcement and invitation supplier. The individuals selected are given the exclusive right to solicit business from students.

No other photographers are allowed to solicit on school property, and no other photographers' photographs are accepted for inclusion in the yearbook. Only a single yearbook is published, and no other yearbook publisher is allowed to solicit at school. The designated printer is the only one authorized to offer graduation announcements and invitations for sale at school. The yearbooks, photographs, and graduation announcements and invitations are purchased by students at their own expense, without expenditure of school funds.

APPLICABLE LAW

All contracts for outside professional services to any school district or school must be let by open bids. A.R.S. §§15-213; 41-730 & 1052.

Arizona Attorney General's Opinion ^{I 76-217} (R-75-800) (1976-77) considered a related question -- namely, the practice of the Department of Health Services in contracting with certain physicians to render health services which DHS was required to provide to handicapped children. The Attorney General expressed the opinion that competitive bidding would be required, unless the Department avoided making a selection by simply setting minimum standards and offering to engage all physicians in the state who met those qualifications. If DHS chose among qualified physicians or, for example, circulated to patients a list which contained names of fewer than all the qualified physicians, then DHS would be making a selection, and competitive bidding procedures would be required.

State of Arizona Official Compilation of Administrative Rules and Regulations (ACRR) §R-7-2-702 provides that a school board may establish its own procedures for purchases involving expenditure of less than \$5,000.00.

OPINION

It is our opinion that the requirements of competitive bidding do not apply in this situation for the following reasons.

First, there is no service being rendered to the school. Rather, it is the students who are having their pictures taken, buying yearbooks, or ordering graduation announcements and invitations. In the Attorney General's Opinion discussed above, it was the patients and not DHS to whom the medical services were being rendered, but the distinction is that the medical services in question were ones which DHS was required to provide. In other words, by treating the patients, the private physicians were fulfilling a duty of DHS and thereby rendering services to DHS. We are aware of no statutory requirement that high schools publish yearbooks, take photographs of students, or make graduation announcements and invitations available.

Second, there has been no selection by the school. The Attorney General's Opinion referred to above makes clear, "when no selection by a state agency takes place, A.R.S. Title 41, Chapter 6.1, is not applicable." The committees are composed of students. They do have faculty advisors,

Felipe Valencia
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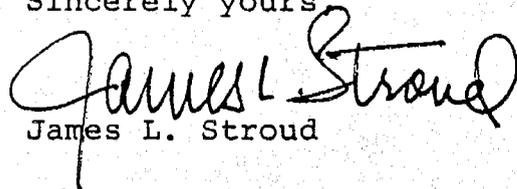
but it is our understanding that the students make the selection.

Third, there is no expenditure of public funds. It is the students who buy the yearbooks, pay for the photographs, and order the graduation announcements and invitations. This factor distinguishes this situation from the one considered in the above-quoted Attorney General's Opinion, wherein medical services were rendered to individual patients but paid for with DHS funds. The only public money involved is expended indirectly -- for example, to the extent that teachers are on school time while they meet with the student yearbook committees. It is likely that such indirectly-expended school money is less than \$5,000.00, which means the school board can set its own procedures pursuant to ACRR §R-7-2-702.

It is important for teachers and administrators involved in the selection process to keep in mind that if they receive any form of gifts, such as photographs or yearbooks, from the photographers, publishers, or printers who are selected, at the very least an appearance of impropriety would be created and would not be in the best interest of TUSD. Accepting such gifts, further, might be viewed as violation of A.R.S. §13-2605, which pertains to employees accepting gifts from persons with whom they deal in the course of their employer's business.

As far as we can tell, this is a question of first impression. It might be that the Attorney General or the courts would see a closer analogy to Op. Atty. Gen. ¹⁷⁶⁻⁹¹⁷ (R-75-800) (1976-77) or would interpret the pertinent statutes more broadly. This opinion is being forwarded to the office of the Attorney General for concurrence or review pursuant to A.R.S. §15-436(b). Unless circumstances require immediate action upon this opinion, you should await my forwarding to you the response of the Attorney General before acting upon the opinion set forth above.

Sincerely yours


James L. Stroud

JLS:law