



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 31, 2020

Risher G. Caves, Esq.
Board Attorney, Jones County School District
Post Office Drawer 167
Laurel, Mississippi 39441

Re: Authority to Purchase New and Used School Buses under Sections 31-7-12 and 37-41-101 of the Mississippi Code

Dear Mr. Caves:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Questions Presented

In your request, you ask four questions regarding a school district's authority to purchase new and used school buses:

1. Although a vendor did not participate in the state contract bidding process and was not awarded a contract under Mississippi Code Annotated Section 37-41-101, may the district nevertheless purchase Bluebird school buses from said vendor as an "identical commodity" under Section 31-7-12 for a price at or below the state approved contract price, as long as the bus meets the required specifications set by the district and the minimum standards set by the state of Mississippi?
2. If Mississippi Code Annotated Section 37-4-101(1) prohibits the district from purchasing a school bus from a vendor who did not participate in the state contract bidding process and was not awarded a contract under Section 37-4-101, could the district nevertheless lawfully purchase Bluebird buses from said vendor as a "single source item" under Section 31-7-13(m)(viii)?
3. If Mississippi Code Annotated Section 37-4-101(1) prohibits the district from purchasing a school bus from a vendor who did not participate in the state contract bidding process and was not awarded a contract under Section 37-4-101, could the district nevertheless

lawfully purchase school buses from said vendor according to the purchasing procedure set forth in Section 31-7-13(c)?

4. If Mississippi Code Annotated Section 37-41-101(1) prohibits the district from purchasing a school bus sold “as a complete unit” from a vendor who did not submit a bid for consideration by the Mississippi State Board of Education (the “Board”), does the term “a complete unit” encompass both new school buses and used school buses? Stated otherwise, in light of the procedure set forth in Section 37-41-101(4), may the district nevertheless purchase a used school bus from a vendor who did not submit a bid for consideration by the Board?

Background

Every year, the Mississippi Department of Education (the “Department”) solicits bids from school bus vendors to determine a price for school buses for every model and capacity. The bids received are then used to determine the state contract price for every school bus model and capacity. Although different categories exist for model and capacity, there is no separate category for different brands of school buses.

Subsequently, the Department composes a list of approved vendors, comprised solely of vendors that participated in the state contract bidding process. The Department then issues the approved list of vendors to all school districts throughout the state.

The district primarily uses Bluebird buses for its school buses, and consequently, the district’s mechanics are trained to repair Bluebird buses and its parts inventory is made up of Bluebird bus parts. Due to changes in the state contract bidding process in 2019, the only vendor in the state of Mississippi that sells Bluebird buses did not participate in the bidding process and is not listed on the Department’s approved vendor list.

Brief Response

1. No. A school district may only purchase school buses using one of the three procurement methods specified in Section 37-41-101. The procedure for purchasing identical commodities in Section 31-7-12 conflicts with Section 37-41-101 and, thus, cannot be used for the purchase of school buses.
2. No. A school district may only purchase school buses using one of the three procurement methods specified in Section 37-41-101. The procedure for purchasing single source items in Section 31-7-13(m)(viii) conflicts with Section 37-41-101 and, thus, cannot be used for the purchase of school buses.
3. Yes. A school district may use the general bidding procedure in Section 31-7-13(c) for purchases made in accordance with Section 37-41-101(3), which authorizes school boards “to advertise for and accept the lowest and best bid received for the purchase of school bus chassis and/or pupil transportation service vehicles.” Miss. Code Ann. § 37-41-101(3). Section 37-41-101(3) further requires that such purchases be “made in accordance to

statutory bidding and licensing requirements” and are “subject to the approval of the State Department of Education which shall verify compliance with the applicable specifications, rules and regulations promulgated by the State Board of Education.” *Id.*

4. A school district may purchase used school buses in accordance with Section 37-41-101(4) and (5), which does not require the vendor to be approved by the Board. However, such purchases must be made in accordance with specifications, rules, and regulations of the Board and are subject to the prior approval of the Department.

Applicable Law and Discussion

The Mississippi Supreme Court has stated that “where a special and particular statute deals with a special and particular subject its particular terms as to that special subject control over general statutes dealing with the subject generally.” *Benoit v. United Cos. Mortg. of Miss., Inc.*, 504 So. 2d 196, 198 (Miss. 1987) (quoting *Lincoln Cnty v. Entrican*, 230 So. 2d 801, 804 (Miss. 1970)). According to Section 37-41-85, “[n]o school board shall purchase any school bus or pupil transportation service vehicle as authorized by Section 37-41-81 except in the manner prescribed in Section 37-41-101.” Thus, a school district does not have authority to purchase school buses using the procedures outlined in Sections 31-7-12 or 31-7-13(m)(viii) for purchasing identical commodities or single source items as described in your request.

Section 37-41-101 specifies three ways in which a school board may purchase school buses: (1) the school district may purchase school buses from a vendor approved by the Board without additional advertisement of bids; (2) the school district may, itself, advertise for bids; or (3) the school district may, with the Department’s approval, purchase used school buses for fair market value. MS AG Op., *Thompson* at *1 (Apr. 23, 2001). Notably, only the first method, which is outlined in Section 37-41-101(1) and (2), requires the school district to purchase school buses from vendors approved by the Board.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General