



# Melissa A. Schiffel

Delaware County Prosecutor

May 22, 2023

Dave Yost  
Ohio Attorney General  
Opinions Section  
30 East Broad Street  
Columbus, Ohio 43215-3428

Dear Attorney General Yost:

Our office requests further clarification and opinion from your office regarding AG Opinion 2019-028 and the implications for construction services of replacement or repaired equipment under R.C. § 9.48 or § R.C. § 167.081.

Specifically, we request an opinion regarding the following two questions:

- 1) Ohio Revised Code § 9.48 provides that a political subdivision may purchase equipment, materials, supplies, or services from joint purchasing programs. With respect to building maintenance and upgrades, doesn't this also include the labor to install, repair, replace or upgrade the equipment, materials or supplies purchased from a joint purchasing program under R.C. § 9.48?
- 2) May a political subdivision use joint purchasing programs so long as any labor associated with the items purchased is not construction services for new construction?

## Background

It is common knowledge that local municipalities and school districts wish to participate in various joint purchasing programs under R.C. § 9.48(B)(2), and make purchases for various items that involve labor to install those items. Participation in such programs by local municipalities and school districts can save these entities thousands of dollars, countless hours of time and immeasurable resources.

Currently, R.C. § 9.48(B)(2) provides, "[a] political subdivision may...participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing political subdivision is eligible for membership." Ohio Revised Code Section 9.48(C) further provides that the acquisition of equipment, material, supplies, or services under R.C. § 9.48(B)(2) "is exempt from any competitive selection requirements otherwise required by law, if the contract in which it is participating was awarded pursuant to a publicly solicited request for proposal or a

competitive selection procedure of another political subdivision within this state or in another state.”

Many of the items traditionally purchased through joint purchasing programs require labor to install, repair, replace or upgrade existing facilities. For example, when a local school district needs to replace a HVAC at one of its schools, the local school district would traditionally look to a joint purchasing program to make the purchase of the replacement HVAC. The labor associated with such items, like replacement HVAC, purchased through a joint purchasing program, is either embedded into the items purchased or included as a separate charge associated with the item purchased. None of the items purchased through joint purchasing programs are intended to create new construction buildings or new construction projects.

In 2019, an Opinion was authored by your office directed at Ohio Councils of Government (COGs). The Opinion held that a COG is not empowered to contract for construction services under the authority of R.C. § 9.48 or R.C. § 167.81. The Opinion reasoned that because the term “construction services” was not included in either provision, the authority of these provisions could not be used to avoid the competitive bidding process for new construction.

#### **Issue**

Since the 2019 Opinion was issued, confusion now exists among Ohio political subdivisions and their ability to use joint purchasing programs for items like HVAC equipment, flooring, fire alarms, etc. for existing facilities. Confusion exists as to whether or not those purchases would be considered “new” construction in light of the 2019 Opinion. These items, and the labor to install these items, are intended to preserve, prolong and protect existing buildings---not new construction.

Hence our request for clarification and further opinion from your office regarding Opinion 2019-028. We seek your opinion on the two questions stated above so that we may provide clarity to local governments and school districts. In turn they will know whether they can purchase maintenance and repair equipment, supplies and materials from joint purchasing programs or must consider other approaches.

Please contact me with any questions.

Sincerely,



Melissa A. Schiffel  
Delaware County Prosecuting Attorney