Authority for Department of Corrections to employ prisoners to perform roofing work on buildings located on prison grounds; no requirement to procure such services under Acts competitive sealed bidding procedures.

The Honorable Harry B. Blevins  
Member, Senate of Virginia  
November 15, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether the Department of Corrections may use inmates, rather than the competitive bidding process, to perform roofing repairs at the St. Brides Correctional Center.

Response

It is my opinion that § 53.1-41 authorizes the Department of Corrections to employ prisoners to perform roofing work on buildings located on the prison grounds. The Department is not required to procure such services under the competitive sealed bidding procedures of the Virginia Public Procurement Act.

Applicable Law and Discussion

Section 53.1-32(A) provides that "[i]t shall be the general purpose of the state correctional facilities to provide proper employment, training and education in accordance with Chapter 18 (§ 22.1-339 et seq.) of Title 22.1[^1] and § 53.1-32.1[^2] … of prisoners committed or transferred thereto." Section 53.1-41 provides that,

[t]o the extent feasible, it shall be the duty of the Director [of the Department of Corrections] to provide persons sentenced to the Department with
opportunities to work and to participate in career and technical education programs as operated by the Department of Correctional Education in accordance with § 22.1-339 et seq. Such work opportunities may include business, industrial, agricultural, highway maintenance and construction, and work release programs as hereafter specified in [Article 3, Chapter 2 of Title 53.1]. In addition, prisoners may be employed to improve, repair, work on or cultivate public property or buildings. [Emphasis added.]

Additionally, the 1996 Appropriation Act specifically tasks the Department of Corrections to develop a plan that would, among other things, use inmate labor for roofing work in prison construction projects. Specifically, the Act provides for the use of inmate labor “to reconstruct the St. Brides Correctional Center for use as a facility for youthful offenders and/or juvenile offenders.”

"If a statute is clear and unambiguous, a court will give the statute its plain meaning." Sections 53.1-32(A) and 53.1-41 set forth the Commonwealth’s policy that inmates should be provided opportunities to work on public projects during their incarceration. Section 53.1-41 explicitly provides for the use of prisoners’ labor to improve, repair and work on public buildings. This statute imposes a duty on the Director of the Department of Corrections to provide work opportunities for prisoners. In the situation you present, it appears that the Department of Corrections has afforded prisoners the opportunity to perform roofing services. Section 53.1-41 clearly authorizes this type of work. The Department of Corrections is not required to procure such services under the competitive sealed bidding procedures of the Virginia Public Procurement Act.

Conclusion

Accordingly, it is my opinion that § 53.1-41 authorizes the Department of Corrections to employ prisoners to perform roofing work on buildings located on the prison grounds. The Department is not required to procure such services under the competitive sealed bidding procedures of the Virginia Public Procurement Act.

1Sections 22.1-339 to 22.1-345 comprise the statutes governing the Department of Correctional Education.

2Section 53.1-32.1 requires that the Director of the Department of Corrections shall maintain a classification system for all prisoners and place prisoners in appropriate program assignments.
31996 Va. Acts ch. 912, at 1714, 2013 (citing Item 457(B)).

4Id.


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