

Poor, Sick and Infirm, Contract for Care of. Corporation, County Officers as Stockholders in. Corporation, as Bidder for Contract With the County Where a County Officer Is a Stockholder in. Poor, Sick and Infirm, Call for Bids for Care of. Poor, Sick and Infirm, Contractor May Sublet in Certain Instances.

The law contemplates that the board of county commission-

ers shall award the contract for the care of the poor, sick and infirm to the lowest responsible bidder. More than one contract for this purpose should not be entered into during any year, unless on account of great distance from the county seat or poor farm, and lack of transportation facilities, economy should dictate more than one place at which the poor, sick and infirm should be cared for.

Where stock is held in a corporation by a county attorney, the corporation is not thereby precluded from bidding on the contract for the care of the poor.

While the law provides that the county commissioners shall direct the clerk to advertise for bids for the care of the poor at the September meeting, the fact that this is postponed to some subsequent meeting does not invalidate the contract.

The chairman, or other member of the board of county commissioners, may, upon proper showing, commit any worthy person to the poor farm, but the board, as a board only, has control of the care of the poor, sick and infirm in other matters.

Helena, Montana, January 8, 1910.

Hon. W. S. Towner,
County Attorney,
Fort Benton, Montana.

Dear Sir:—

I am in receipt of your letter of January 3, 1910, wherein you make reference to your letter of December 16, 1909, asking my official opinion on certain questions therein submitted. Your letter of January 3 also presents for opinion certain questions, which I will take up, together with those submitted under date of December 16, 1909.

The letter of December 16, and the questions therein submitted were investigated by Mr. Murphy, one of my assistants, and the conclusions reached by him were, as you may say, communicated to you by telephone. On account of the press of business incident to the special session of the legislature, and questions connected with the building of additions to the capitol, the matter of formulating a written opinion was overlooked and none was forwarded to you.

The first question submitted by your letter of December 16 is as to whether the board of county commissioners may let more than one contract for the care of the sick, poor and infirm of Chouteau county. In explanation of this question you state that the county maintains a poor farm for the care of the sick, poor and infirm, but that some of the patients who may be committed there cannot receive proper medical and hospital attention.

The second question is as to whether or not the fact that the county attorney, a public officer, is a stockholder in a certain hospital would prevent that hospital from being considered as a bidder for the contract for

the care of the sick, poor and infirm.

The third question, you enclose certain notices and ask my opinion as to their sufficiency as calls for bids. And:

Fourth, you ask whether or not the fact that the call for bids was ordered by the board of county commissioners at the October rather than the September meeting would invalidate the call.

In your letter of January 3, you submit two questions.

Chouteau county, having a poor farm, and having let a contract for the care of the sick, poor and infirm of the county at the poor farm, can the contractor make a subcontract for the care of such of the sick, poor and infirm as he cannot properly care for at the poor farm; and,

Second: What, if any, authority has the chairman of the board of county commissioners with reference to the sick, poor and infirm when the board is not in session.

As heretofore suggested to you over telephone, it is my opinion that the law contemplates that the board of county commissioners should award only one contract for the care of the sick, poor and infirm of the county, and that that contract should be let to the lowest responsible bidder. If, however, on account of the great distances in some of the counties, or lack of transportation facilities, the county commissioners, in the exercise of their judgment, should believe that the maintenance of two places for the care of the sick, poor and infirm is more economical and would result in better service, I do not think the courts would disturb such contracts. However, section 2055, revised codes, as amended by chapter 29, laws of 1909, provides that,

“the proposals must be addressed to the clerk of the board, and the board must * * * award the contract * * * to the lowest responsible bidder, for a period of not exceeding three years.”

From this section it would appear that where a county maintains a poor farm, that it is the intention of the law that the lowest responsible bidder should take charge of such farm, and there provide for the maintenance and medical attention required by the sick, poor and infirm, and, when necessary, meet burial expenses.

In reply to your second question, I can see no reason why a corporation conducting a hospital could not be a qualified bidder for the care of the sick, poor and infirm, even though the county attorney of the county where the bid is submitted is a subscriber to the capital stock of the corporation.

3. The notices which you enclose seem to me to be sufficient as a form upon which to base the awarding of a contract. It is impossible to say, from the information contained in your letter, whether the poor farm is located near Fort Benton or at some other place in the county.

4. While section 2054, revised codes, as amended by chapter 29, laws of 1909, provides that the board of county commissioners shall make an order directing the clerk to publish a notice inviting sealed proposals for the care, support and maintenance of the indigent sick, poor and infirm of the county at the regular September meeting, the fact that it is not done at that meeting but the action deferred until

the meeting in October, does not invalidate the action of the board, and a contract entered into under those conditions would be as binding as though the order were made at the time required by law.

5. Where a contract has been let for the care of the sick, poor and infirm of the county, and the facilities at the farm are such that some of the patients cannot be properly treated there, it is within the province of the contractors, acting under the approval of the board of county commissioners, to sublet to any proper person the support and maintenance of those sick and infirm who cannot be given proper treatment under the facilities afforded at the poor farm.

6. Your last question is as to what authority the chairman of the board of county commissioners has with reference to the sick, poor and infirm when the board of county commissioners is not in session.

The chairman of the board of county commissioners is not given any express authority by the laws concerning the care, maintenance and support of the indigent sick, poor and infirm. However, in the absence of the board from the county seat the chairman, or other member of the board, would be acting within his authority in committing any person, whose circumstances and condition warrant it, to the care of the poor farm contractor. Any other matters, in emergencies, could properly be attended to by any member of the board, where necessity demanded, subject to the ratification and approval of the entire board when next in session.

The powers granted to members of the board of county commissioners, with regard to the commitment of poor, as a county charge, is found in section 2060, revised codes.

Yours very truly,
ALBERT J. GALEN,
Attorney General.