

Poor Farm, Award of Contract for Care of Poor. Board of County Commissioners, Discretion on Award of Contract for Care of Poor.

Under decision of supreme court a board of county commissioners may reject all bids for the care of the county poor and readvertise. The contract for the care of the poor should be let for a period of one year only. Under the laws if the board sees fit, it may reject all bids and appoint a county superintendent to care for the poor and take charge of the poor farm.

January 19, 1912.

Hon. J. J. Hindson, Chairman,
Board of County Commissioners,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 16th inst., where in you request instructions as to the procedure now to be taken by the board of county commissioners of Lewis and Clark county with reference to the contract for the care of the poor of the county in view of the recent decision of the supreme court in the case of State ex rel Steuwe vs. J. J. Hindson, et al.

The opinion of the supreme court seems to be clear and explicit as to the proceedings now to be taken by your board with reference to this contract. In the first place the opinion at page nine thereof states:

"The authority in the board to reject all bids is necessarily implied and if the situation warrants it the board may readvertise."

Upon reconvening then it seems that the first duty of your board would be to determine whether or not the situation now presenting itself warrants the board in readvertising for bids, or whether the best interests of the county would be subserved by acting upon the bids heretofore presented. This determination on the part of the board should be made a matter of record at your meeting. Should the board determine at this meeting that the situation does not warrant the readvertising for bids, then the position of the board is defined on page six of the supreme court decision in the following language:

"The board is now in precisely the same position it was in on September 30th when it met to consider the bids and before it attempted to act."

Further on page eight of the opinion the procedure to be taken

by the board is explicitly defined in the following language:

"It (the board) must at such meeting exercise its best judgment or discretion and determine these facts at least:

- a. The responsibility of the bidders.
- b. The suitability of the bidders.
- c. Which of the bidders possessing the qualifications of responsibility is the lowest.
- d. Whether it is to the best interest of the county that a superintendent be employed and the poor cared for by a direct method in preference to caring for them by contract at any bid submitted."

These matters should be determined by the board in the order in which they are above enumerated and should be made matters of record. I would suggest that the record of the commissioners be made full and explicit as to each and every action determined upon by them and the reasons therefor.

Further on page nine of the opinion the following language is used:

"The statute expressly authorizes the board to reject the bid of any person whom it deems unsuitable and the board is expressly authorized to employ a superintendent and care for the county charges by the direct method."

With reference to the length of time for which the contract you are about to let, should be entered into, that is if the board determines to let a contract and not care for the poor by the direct method, the opinion on page ten states:

"It was the intention of the legislature that bids should be asked for one year only."

And it is, therefore, my opinion and I advise that the contract, if any is let, should be for the period of one year commencing on Sept. 30, 1911, and extending to Sept. 30, 1912.

You further ask whether your board should take action immediately or whether you should wait until the district court notifies you to act. It is agreed by counsel for the respective parties in the case of *Steuwe vs. Hindson et al.*, that the remittitur from the supreme court should be issued forthwith—in other words, counsel for the relator has waived his right under the rules of the supreme court to move for a rehearing. I would, therefore, advise that you proceed forthwith to a consideration and disposition of this matter.

Yours very truly,

ALBERT J. GALEN

Attorney General.