

County Commissioners, Power of to Erect Buildings. Buildings. Authority of Commissioners to Erect. Power, of County Commissioners to Change Plans of Public Buildings. Bids, for Public Buildings, When May Be Changed. Contracts Public Buildings, When May Be Altered.

The county commissioners do not have authority to materially change plans and specifications for public buildings after bids have been received therefor, without resubmitting same to the bidder, or giving opportunity for bids to be received thereon.

June 5, 1915.

Hon. L. V. Beaulieu,
County Attorney,
Havre, Montana.

Dear Sir:

I am in receipt of your letter of the 2nd instant, submitting certain questions in reference to the power and authority which may properly be exercised by the Board of County Commissioners in the construction of a county court house, with reference to the amount which may be expended therefor; and also relating to the legality of certain contracts relating to separate parts of the work. In order to present the matter clearly, I have drafted the following question, which I believe include the points of your inquiry:

1. Where the total amount which the Board of County Commissioners is authorized to expend for the erection of a county court house is \$125,000, may the Board let three separate contracts for doing separate parts of the work, none of which exceed \$125,000, but in the aggregate are in an amount in excess of that sum?

2. If question No. 1 is answered in the negative, may the Board make valid such contracts by reserving in itself the right to make deductions in the material used, or by altering the plans and specifications, so as to keep the total expenditure within the \$125,000 limit?

3. If questions No. 1 and No. 2 are both answered in the negative, may the Board alter the plans and specifications, so as to confine the expenditures within the legal limit, and then award the contracts to the lowest bidders on the original plans and specifications, without readvertising?

These questions will be considered and answered in their order.

1. The Supreme Court of this state has repeatedly decided that the maximum amount which a Board of County Commissioners is authorized to expend for a single purpose cannot be increased, either directly or indirectly by any means or method of procedure whatsoever. The maximum amount is the extreme limit of the Board's authority, and it cannot by any course of procedure add to that authority. In such case the validity of each separate contract would not be inquired into, but the aggregate liability, as expressed in all of them, would be considered in

relation to the power of the Board, and if that aggregate extended beyond the maximum limit, a court would enjoin the Board from acting. This was exactly what was done in *Hefferlin vs. Chambers*. In that case three separate contracts had been entered into by the Board, with reference to the construction of a county court house. At least one of the contracts had been fulfilled, but the court nevertheless, in considering the power of the Board, considered only the aggregate of three contracts, without passing upon the validity of any one of the contracts. Hence, the answer to question No. 1 must be in the negative.

Hefferlin v. Chambers, 16 Mont. 349; 40 Pac. 787;
Hoffman vs. Commissioners, 18 Mont. 224; 44 Pac. 973;
Hotchkiss vs. Marion, et al. 12 Mont. 218; 29 Pac. 821;
Jenkins vs. Newman, 39 Mont. 77; 101 Pac. 625;
Morse vs. Granite Co., 44 Mont. 78; 119 Pac. 286;
Reid vs. Lincoln Co., 26 Mont., 31; 125 Pac. 429;
Opinions Attorney General, 1912-14, 246.

2. The power of the Board, with reference to the amount which may be expended, is determined by the gross liability, as expressed in the various contracts, without reference to reservations contained in the contract, for in such cases, it would necessarily be discretionary with the Board whether it exercised this option so reserved, as was stated in *Jenkins v. Newman*, *supra*, in considering a similar question, with reference to a reserve power in a contract:

Again it is contended that the clause of the contract providing that the Commissioners may elect to have additional work performed and material furnished, vitiates the same. We cannot say from the contract itself that either county will see fit to exercise this option, and there is nothing in the agreed statement of facts to indicate that the commissioners threatened or proposed to take advantage of it."

Jenkins vs. Newman et al., *supra*, at p. 81.

Hence, question No. 2 must also be answered in the negative.

3. If the Board may after receiving bids, materially alter the plans and specifications, for the purpose of bringing the total cost of the structure within the limit, thereby permitting the lowest bidders on the original plans and specifications to decrease the amount named in their bid, and then let the contract to such lowest bidders, it would be in effect contracting for the construction of a court house without competitive bidding, for the other bidders would not have an opportunity of making a bid on the altered plans and specification. The policy of the law, requiring an opportunity for competitive bidding, is for the protection of the county. I am, therefore, of the opinion that the Commissioners do not have authority to alter the plans and specifications, and then to permit the lowest bidders on the original plans to change their bid, without giving the same opportunity to all others who desire to make bids. The opinion given to the Board of County Commissioners is affirmed.

In view of the conclusions reached on these various questions, I am further of the opinion that the proper course for the Board to pursue in this matter, is to alter their plans and specifications in such a manner as to bring themselves within the limit of their authority as

to the expenditure, and then readvertise, giving all persons who desire to bid an opportunity so to do.

It may be possible that a change in the plans and specifications as to all of these contracts will not be necessary, but that matter cannot be determined here; but where material changes are made in the matters to which any of the contracts pertain, a rejection of the bids and a readvertisement for bids under the changed plans and specifications is the only safe course to pursue.

Yours very truly,

J. B. POINDEXTER,

Attorney General.