

Contract for School Supplies—Division Of.

Section 509 of the school laws with reference to the division of a contract for school supplies construed.

Sept. 26, 1919.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

You have submitted to me a letter from School District No. 31 of Pondera County, in which complaint is made by the writer to various acts of the school board, one of which is to purchase two heaters and playground apparatus from H. C. Cooley (Superintendent of Conrad schools), for consideration of \$300.00 in the first instance and \$119.00 in the second instance, without advertising for bids.

That portion of Section 509, School Laws, covering this question, is as follows:

“No board of trustees shall let any contract for building, furnishing, repairing or other work, for the benefit of the district, where the amount involved is \$250.00 or more, without first advertising in a newspaper, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided, the board shall have the right to reject any and all bids.”

You have asked whether this provision can be defeated by dividing the contract so as to secure different sums, each less than \$250.00.

In *State ex rel. Woodruff, Dunlap Printing Co.*, 52 Neb. 25, the court held that where the statute provided that one part of the state printing should be let in one contract and then proceeded to designate several other classes of work, each of which it directed to be let in another contract, it was not within the power of the printing board to sever any of the clauses, and let the work to separate bidders. The action on the part of the board in severing the work and letting it to different bidders was no more than an attempt to award the contract in a manner not allowed by law. In the case at bar the commissioners were not only not guided

by the provisions of the statute, but they disregarded its plain provisions and requirements, both in failing to let the contract to the lowest bidder and in severing the work to be done and letting it under separate contracts to different parties. The county thus failed to get the benefit of the competition provided for in the statute, and the purpose of this provision is defeated.

State vs. Coad, 23 Mont. 138.

The remedy is by injunction at the suit of a taxpayer.

Bids need not be called for unless the statute requires it, but if notice, advertising and similar provisions are required, a contract entered into without attention to these preliminaries will be held invalid. Quoted with approval in O'Brien v. Drinkenberg, 41 Mont. 549.

In Ford vs. Great Falls, 46 Mont. 409, it was said: "The power to let (contracts) is lodged exclusively in the council under the limitations prescribed by statute. If the statute granting the power also prescribes the procedure which must be pursued, this procedure is the exclusive guide, and the question of good or bad faith or of sound discretion on the part of the council does not affect the result. The question always is what does the statute say shall be done? The provision requiring competitive bidding is designed to prevent favoritism and to secure to the public the best possible return for the expenditure of the funds which the property owners are required to furnish through the payment of taxes."

I am of the opinion, therefore, that if a contract cannot be divided in the first instance to defeat the statute no subsequent arrangement as to division of payments could be more effective to defeat its purpose.

Respectfully,

S. C. FORD,

Attorney General.