

**Schools—School Trustees—School Buildings—Contracts  
—Bids.**

The Trustees of a school district have authority to contract with an architect for plans of a school building at a cost of \$800.00 without first advertising for bids.

Anker O. Torrison, Esq.,  
County Attorney,  
Cut Bank, Montana.

My dear Mr. Torrison:

You have submitted to this office for my opinion the following question:

"Is it lawful for a Board of School Trustees to contract with an architect for a set of plans for a school building proposed to be built in the district, at an agreed price of \$800.00 for the plans alone, being 4% of the \$20,000.00 proposed to be spent on the school building, without first advertising for bids for such plans in the manner prescribed by Section 1016, Revised Codes of Montana, 1921?"

This section provides in part as follows:

"No Board of Trustees shall let any contract for building, furnishing, repairing, or other work, for the benefit of the district, where this amount involved is two hundred and fifty dollars, or more, without first advertising in a newspaper published in the county for at least two weeks, calling for bids to perform such work, and the Board shall award the contract to the lowest responsible bidder;" \* \* \*

The question involved is whether "building, furnishing, repairing, or other work" includes the services of an architect. The general rule is that professional services involving personal skill do not come within the provisions of similar statutory requirements. Thus, in the case of *Heston v. Atlantic City*, 107 Atl. 820, 821, the question involved was whether the services of an expert accountant were required to be procured by competitive bidding. The statutory provision contained the following: The contract "for the doing of any work, or for the furnishing of any material or labor," unless awarded to the lowest responsible bidder shall be invalid. The court said:

"It is unnecessary, however, to invoke the reasoning of either case as ratio decidendi here; for as we apprehend the services to be rendered under this resolution were of a character involving peculiar professional education and experience, which invariably have differentiated their possessor in the industrial, economic, and social environment of life, from one possessed only of the capacity to furnish work and labor, as those terms are commonly accepted. Such services are comparable in character with the special services of counsel, the employment of a physician, or like expert service in the discharge of municipal administrative requirements; and while generally all such persons are engaged in work and labor, the ordinary mind, untrammelled by the niceties of phraseology, and etymology, would find it difficult, even in the present liberal segregations of economic life, to change the acquired meaning that custom and time has accorded these words."

In the case of *Horgan & Slattery v. City of New York*, 100 N. Y. Supp. 68, 71, the court had under consideration the question of whether services of an architect were required to be secured through advertisement for bids. The court said:

"It was not necessary to let the contract for the preparation of plans and specifications for the proposed armory by competitive bidding. The services required certain knowledge and skill and that character of services need not be obtained by bids." (Citing *Peterson v. Mayor of New York*, 17 N. Y. 449, 453. See also 28 Cyc. 659.)

It is, therefore, my opinion that the services of an architect are not required to be obtained by competitive bidding under the provisions of Section 1016, Revised Codes, 1921.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.