

telligent bidding, but must not contain such restrictions in the way of detail as would prevent bidding and stifle competition. Opposite views are taken in case of patented articles or monopolies.

October 3, 1933.

In your request for an opinion you submit specifications for track-type tractors. The question involved is the legality of the specifications submitted by the county commissioners as a basis for receiving bids required by Chapter 8, Laws of 1933. This chapter requires that "no contract shall be entered into by a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road, highway, or other machinery, apparatus, appliances or equipment, or materials, or supplies of any kind, for which must be paid a sum in excess of five hundred dollars, without first publishing a notice calling for bids * * * and every such contract shall be let to the lowest responsible bidder."

The specifications consist of nearly three single spaced pages. Some of the requirements are as follows: "Must have four or more speeds forward and one reverse. Low gear not to exceed 1.6 miles per hour at governed speed; second gear 2.4 miles per hour; third gear 3.1 miles per hour; fourth gear 1.6 miles per hour; reverse gear 1.9 per hour. * * * To be 4 cylinder, slow speed, not over 900 R. P. M. governed, at full load; valve in the head. * * *"

On the face, the specifications look considerably like the manufacturer's complete detailed specifications of a certain make of track-type tractor. They have the appearance at least of being an adoption by the commissioners of a bidder's own specifications of his track-type tractor. I do not feel, however, that I am able to place an unqualified interpretation upon these specifications as I am not acquainted with the facts and have not had the opportunity of making an investigation. Therefore, I do not wish to make such assertion. It is somewhat difficult, however, to understand why only a 4 cylinder engine or a valve in the head engine would be a satisfactory type of engine. It is likewise difficult to understand why a speed exceeding 1.6

Opinion No. 352

County Commissioners — Bids, Specifications for—Tractors—Patented Articles—Monopolies

HELD: Specifications for bids must be sufficiently definite and precise to furnish a basis for fair and in-

miles per hour at low gear would be too fast or why all of these speeds of fractional miles per hour should be so exact. It is difficult to understand the reasonableness or necessity of some of the other details of the specifications.

It seems to be the general rule of law that specifications inviting bids must be sufficiently definite and precise to furnish a basis for fair and intelligent bidding. It is also the general rule that there must not be such restrictions in the way of detail in the specifications which would prevent bidding and thus stifle competition. The express purpose of the law is to obtain competitive bidding and to enable the commissioners to purchase property from the lowest responsible bidder. The general rule of law is stated in 44 C. J. p. 104, Section 2191. Also page 324, Section 2490 et seq. Note 10 of section 2191, supra, contains a considerable number of cases in support of this rule. See also McQuillin Municipal Corporations, Second Edition, Sections 1310, 1309, 1306. In Section 1310, supra, the text-writer said: "Under laws requiring that plans and specifications and detailed drawings be prepared, it is sometimes difficult to determine to what extent the drawings or specifications must be carried into detail. Such provisions are not to be construed literally, but in a manner merely to secure the object for which they were designed * * *."

The text-writer then quotes from *Ampt v. Cincinnati*, 17 Ohio Cir. Ct. 516, aff'd in 60 Ohio St. 621, 54 N. E. 1097: "The machinery required for this work is only capable of being built by ten firms in the United States. Of these eight were bidders on this work. The difficulty that presented itself at once to the trustees in making exact drawings and specifications of every part was this: machinery of this magnitude has as yet not reached that state of perfection, and probably never will, where all bidders build to any certain and fixed plan as to details. In this respect each builder has his own detailed plans, and no two are alike, and their tools and patterns are made to produce their own work after their own plans; therefore, if the detailed plan of this complicated work

was to be given in all of its parts, the trustees were either compelled to adopt the plans of one of the concerns which had produced such work, or else get up a plan of the same kind of their own. It will be seen at once that the object of the law would be defeated if the board were to adopt the detailed plans of any one of the firms, for this would virtually destroy all bidding by firms other than the one whose plan was adopted, and place the trustees at the mercy of that firm. The price to the city would in all probability be much greater than it should be. This would destroy competition in bidding, the very thing the law was intended to bring about."

The court in the case last cited, made this apt comment on page 520 of Volume 17, Ohio Circuit Court Reports: "In construing statutes it is a well known and valuable rule of the law that a thing may be within the law and yet not within the letter of the law, and a thing may be within the letter of the law and still not within the law; and so it seems to us in this case that it is within the letter of the law that these specifications and detailed drawings mentioned in the statute should give every detail of every part of this great and complex machinery, but we do not believe it is within the meaning of the law that they should do so." See also: *Grace v. Forbes*, 118 N. Y. S. 1062, (at 1063, 1065 and 1066) 64 Misc. Rep. 130; and 15 C. J. 550, sec. 244.

We have been concerned above with the general rule. In regard to patented articles and monopolies, there are two opposite views. Our Supreme Court, so far as we can ascertain, has not had occasion to pass on the question. We call attention to 44 C. J. p. 103, where the cases are cited in support of the following: "Opposite views have been taken of the effect of a provision requiring advertisements and bids for patented articles or articles or materials controlled by a monopoly. One is that municipal corporations are thereby precluded from requiring articles or materials with reference to which there cannot be free competition in the bidding. The other view is that, where the best interests of the city will be subserved

by the use of a patented article or an article controlled by a monopoly, procurable from only one source, the provision in question has no application whatever, the case being without its spirit and intent; and in some cases it is expressly so provided in the grant of authority to make the contact." We are not possessed of sufficient facts to determine whether this exception to the general rule should apply and therefore express no opinion as to which of these two opposite views should be adopted. Our Supreme Court does not seem to have passed on the question.