

Opinion No. 619.

**County Commissioners—Lease Agree-
ment—Contracts—Budget
—Installment Contract.**

HELD: The county commissioners
may not, by merely labeling a contract

a "lease contract" and by referring in the contract to the payments as "rents," change the essential character of a "contract of purchase" to that of a "contract of lease." Such a contract would violate the budget law and Chapter 8, Laws of 1933.

A contract, payable in installments, to purchase property would be legal if properly let and the payments each year were within the budget.

October 4, 1934.

You state that the board of county commissioners of Mineral County wish to obtain some road machinery consisting of one TD-40 Tractor wide model with trail-builder, etc., for the purchase of which they failed to budget; that they now propose to enter into a contract to rent the desired machinery according to the terms of a "lease contract." You ask my opinion whether the contract is one of purchase or one of rent, and if the latter, whether they must advertise according to Chapter 8, Laws of 1933.

The proposed "lease contract," which is with the J. D. Adams Company of Indianapolis, Indiana, names the sum of \$5,415.80 as the "selling price" of the machinery, provides for the payment of \$246.14 at the end of each month beginning October 1, 1934, and ending June 30, 1935, and for the purchase of all repairs (except tractor repairs) from said company at the regular price. The "lease contract" further provides that the county, at the end of such lease, having then paid a total of \$2,954.24, may either purchase said machinery or may lease it for an additional twelve months at the same monthly rental and at the end of such "second lease period" shall have the right to purchase it for "one dollars cash." At the end of said "second lease period" the county will have paid out in "rent" the full amount of the selling price of the machinery excepting only a balance of seventy-two cents.

You did not state whether you have given your opinion to the county commissioners and if so, what it is. Section 1, Chapter 8, Laws of 1933, provides:

"No contract shall be entered into by a Board of County Commissioners for the purchase of any automobile, truck, or other vehicle, or road, high-

way, 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 for furnishing the same, which notice must be published at least once a week, for three consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest responsible bidder."

It is my opinion that the board of county commissioners in entering into this so-called "lease agreement" would not only be violating the budget law, but said Chapter 8 as well. It is quite apparent that this so-called "lease agreement" is purely an evasion and that the county commissioners are attempting to do indirectly what they cannot accomplish directly. The county commissioners and the machinery company may not, by merely labeling a contract a "lease contract" and by referring in the contract to the payments as "rents," change the essential character of a "contract of purchase" to that of a "contract of lease." It is proposed that the county in twenty-two months shall pay enough "rent" to pay the selling price of the machinery save seventy-two cents. To label such a contract as a "lease contract" is to place a false label on it. In my opinion no Court would sanction such a contract. It is so well settled that no citation of authorities is necessary, that the law will not permit one to do indirectly what one cannot do directly.

No doubt the purpose of said Chapter 8 in requiring advertising for a period of three consecutive weeks and the letting of contracts to the lowest responsible bidder, was to make more difficult, if not to prevent, corruption and favoritism. We do not say that either exists in this instance. We prefer to assume that the county commissioners are acting in good faith and for the best interests of the county as they see it. In my opinion, however, the proposed "lease contract" is illegal and would not be upheld by the Courts.

The question whether the county commissioners may make a contract to purchase property payable in installments will probably arise. I do not

find any statutory or constitutional prohibitions against such contracts and in the absence of such I am of the view that such contracts would be legal if properly let and the payments each year were within the budget.