

Opinion No. 172.

State Purchasing Agent—Call for Bids.

HELD: The statute requires that the State Purchasing Agent must advertise for bids in purchasing all supplies and equipment. Although such advertising may be futile so far as concerns results obtained, the statutory duty must nevertheless be performed.

October 7, 1937.

Hon. I. S. McQuitty
State Purchasing Agent
The Capitol

Dear Mr. McQuitty:

You have asked my opinion on the following facts:

"For the past several years this office has advertised and sent out calls to service station dealers in gasoline, asking them to bid on furnishing gasoline to State-owned cars for six-months periods, October 15th to April 15th on Winter Grade and April 15th to October 15th on Summer Grade Gasoline.

"Ever since the N.R.A. was created the State has gained no advantage as to price except a rebate of 1¢ per gallon Federal Tax, which refund may be obtained from any service station provided exemption certificates are signed. In reply to our calls for bids, we often receive quotations from bidders at a point at which they do not maintain a service station, and this results in considerable confusion to State employees who are trying to obey the rules of this office.

"The Highway Department has 12 points in the State at which they can accept carload deliveries, and we continue to send out separate calls for bids for lots as required and do find a variance in prices and we do award the business to the lowest bidder. The prices on this gasoline vary between 14¢ and 17¢ per gallon and includes the State tax but excludes the Federal Tax. Service Station deliveries, however, are on a different basis. If the price of gasoline in Helena is 25½¢ per gallon the price ordains at every service station and a State employee will pay 24½¢ at every station, obtaining only the rebate of 1¢ per gallon the Federal tax.

"Under the existing conditions, since the State can gain no advantage by going to the considerable expense necessary to call for bids, the question then arises, is it within the jurisdiction or authority of the State Purchasing Agent to refrain from sending out a call for bids on service station deliveries of gasoline. It seems logical to argue that the funds of this office should not be wasted in an endeavor that brings no advantage to the State."

While, in the circumstances, it seems utterly futile to advertise for bids, Section 293.3, R. C. M. 1935, provides that the State Purchasing Agent "must advertise" for bids. Since the statute does not make any exceptions and does not make your call for bids dependent upon the results obtained, we are unable to advise you that you have any discretion in the matter or that you may omit such statutory requirement. Apparently the only remedy is by legislation.