

Opinion No. 160.

Surplus Commodities—County Commissioners—Counties—Bids—Budgets.

Held: Chapter 156, Laws of 1945, permits a board of county commissioners to contract with the United States of America or any federal agency for the purchase,

lease or other acquisition of any new, unused or rebuilt equipment, supplies and materials and make payment therefor without first advertising for bids as provided in Section 4605.1, Revised Codes of Montana, 1935, as amended by Chapter 42, Laws of 1941. However, Chapter 156, Laws of 1945, in no way relieves the board of county Commissioners from compliance with the county budget system as outlined in the law. Further, each board of county commissioners must continue to obey the mandate of Article XIII, Section 5, of the Montana Constitution, which provides no county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000.00 without the approval of a majority of the electors thereof voting at an election provided by law.

May 21, 1946.

Mr. Oliver Phillips
County Attorney
Lincoln County
Libby, Montana

Dear Mr. Phillips:

You have inquired whether a board of county commissioners may contract with the United States of America or any federal agency for the purchase, lease or other acquisition of any new, unused or rebuilt equipment, supplies and materials and make payment therefor without first advertising for bids as provided in Section 4605.1, Revised Codes of Montana, 1935, as amended by Chapter 42, Laws of 1941.

Section 4605.1, as amended, provides no contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, for which must be paid a sum in excess of one thousand dollars (\$1,000.00) without first publishing a notice calling for bids, and every such contract shall be let to the lowest and best responsible bidder.

Chapter 156, Laws of 1945, is an act providing for the suspension of certain

rules relating to purchases by the State of Montana and its political subdivisions. It provides:

"The State of Montana, any county, city or town, school district or other political subdivisions of the State of Montana may enter into any contract with the United States of America or any federal agency for the purchase, lease or other acquisition of any new, unused or rebuilt equipment, supplies and materials without regard to any provisions of law relating to the methods of purchase by such county, city or town, school district or other political subdivision.

"The State of Montana, any county, city or town, school district or other political subdivision of the State of Montana may designate by appropriate resolution or order any office holder or employee of its own to enter a bid or bids in its behalf for any sale of any new, unused or rebuilt equipment, supplies and materials owned by the United States of America or any agency thereof and may authorize said person to make any down payment or payment in full required in connection with such bidding.

"The provisions of this act shall be effective until March 1, 1947."

Nowhere in Chapter 156 is there an express repeal of Section 4605.1, Revised Codes of Montana, 1935, as amended by Chapter 42, Laws of 1941, and no repeal of that section was intended or affected by the passage of Chapter 156. But the intention of the legislative assembly, in enacting Chapter 156, Laws of 1945, is obvious: to provide to the State of Montana, counties, cities, towns, school districts, and other political subdivisions of the state an opportunity to purchase surplus commodities from the federal government without the necessity of calling for bids.

When Chapter 156, Laws of 1945, was enacted the European and Pacific wars were yet in progress, but it appears our legislature contemplated one or both of those conflicts might be concluded before the assembly of the 1947 legislature—with the result that new, unused or rebuilt equipment, supplies and materials might become available to state and local governmental bodies by reason of their release by

federal agencies. Hence, the waiver of the ordinary legal process relating to purchases by the state and its political subdivisions of materials from the federal government. The provisions that the act shall be effective only until March 1, 1947, reveal further the intent and purpose of the legislature.

Therefore, I agree with your conclusion that Chapter 156, Laws of 1945, permits a board of county commissioners to contract with the United States of America or any federal agency for the purchase, lease or other acquisition of any new, unused or rebuilt equipment, supplies and materials and make payment therefor without first advertising for bids as provided in Section 4605.1, Revised Codes of Montana, 1935, as amended by Chapter 42, Laws of 1941. And I join with you also in cautioning that Chapter 156, Laws of 1945, in no way relieves the board of county commissioners from compliance with the county budget system as outlined in the law. Further, each board of county commissioners must continue to obey the mandate of Article XIII, Section 5, of the Montana Constitution, which provides no county shall incur any indebtedness or liability for any single purpose to an amount exceeding \$10,000.00 without the approval of a majority of the electors thereof voting at an election provided by law.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General