

Opinion No. 213.

**County Commissioners—Authority,
Board of County Commissioners—
Contracts, County Commissioners—
Purchases, County Commissioners,**

Held: A board of county commissioners may not agree to purchase or contract for supplies, furnishings or replacements unless it receives a bid or contract in a certain and definite amount.

October 24, 1946.

Mr. Ernest A. Peterson
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Peterson:

You have requested my opinion whether or not the board of county commissioners may enter into contracts or accept bids for purchases for the county in instances where such contracts contain the so-called "escalator clauses." You state your opinion is the board of county commissioners may not enter into such contracts or accept such bids.

In considering this question, it is necessary to review the statutory authority of such boards. It will be noted our Supreme Court in the case of *State ex rel. Bowler v. Board of County Commissioners*, 106 Mont. 251, 76 Pac. (2d) 648, stated:

"It is true that a board of county commissioners is one of limited powers, and must in every instance justify its action by reference to the provision of law defining or granting these powers."

Section 4605.1, Revised Codes of Montana, 1935, provides no contract shall be entered into by a board of county commissioners for the supplies therein mentioned for which must be paid a sum in excess of \$1,000.00 without first publishing a notice as required therein, and **every such contract shall be let to the lowest responsible bidder**. The budget act covers all appropriations for the regular expense of the county, and in Section 4613.5, Revised Codes of Montana, 1935, it is provided:

". . . Expenditures made, liabilities incurred, or warrants issued, in excess of any of the budget detailed appropriations as originally determined, or as thereafter revised by transfer, as herein provided, **shall not be a liability of the county**, but the official making or incurring of such expenditure or issuing such warrant shall be liable therefore personally and upon his official bond . . ." (Emphasis mine.)

It would, therefore, appear the board of county commissioners must at all

times know the definite and certain amount of all obligations which it incurs for supplies it buys or contracts for, on behalf of the county, so it may be assured it is always letting a contract to the lowest responsible bidder and is not at any time exceeding the detailed amount budgeted. Public business handled by the board of county commissioners has been hedged about through safeguards by the legislature, and such business is altogether different from private business. Therefore, until the legislature sees fit to change the law, I agree with your findings.

It is, therefore, my opinion a board of county commissioners may not agree to purchase or contract for supplies, furnishings or replacements unless it receives a bid or contract in a certain and definite amount.

Sincerely yours,

R. V. BOTTOMLY,
Attorney General