

Opinion No. 98

**Counties—School Districts—Contracts—Rural Improvement District—
Special Improvement District.**

Held: 1. Bidders upon Rural Improvement District Works, Special Improvement District Works, and upon the construction of State buildings or the alteration, repair and improvement of State buildings and grounds must accompany such bids with designated security in the form of a certified check. In addition to the aforementioned situations wherein the security is required by statute, a Board of County Commissioners and a Board of School District Trustees may in the exercise of their respective discretion and judgment require that bidders upon county and school district contracts deposit security with their bids as a means of insuring that all bidders are responsible parties.

March 9th, 1950.

Mr. Melvin E. Magnuson
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Magnuson:

You have requested my opinion upon the following question:

"Can contractors submit certified checks, cashier's checks, or bid bonds as security upon the submission of bids to perform county or school district construction work in Montana?"

As examination of the Montana Statutes reveals that there are no provisions of the law which require that contractors for general county or school district work must furnish security upon the submission of a bid. There are, however, several specific statutes requiring bidders upon public works to furnish security upon the submission of bids. They are as herinafter set forth.

Section 16-1607, Revised Codes of Montana, 1947, provides that all bids submitted upon Rural Improvement District Work must be accompanied by a certified check payable to the Board of County Commis-

sioners, certified by a responsible bank for an amount which shall not be less than ten per cent (10%) of the aggregate of the proposal.

Section 11-2209, Revised Codes of Montana, 1947, provides that all bids submitted upon Special Improvement District Work must be accompanied by a certified check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per cent (10%) of the aggregate of the proposal.

Section 82-1133, Revised Codes of Montana, 1947, provides that when bids are submitted to the State Board of Examiners for the construction of state buildings or the alteration, repair and improvement of state buildings and grounds, such bids must be accompanied by a certified check for five per cent (5%) of the amount of the bid.

Apart from the three above cited provisions, the law is silent as to any requirement that security be deposited with a bid upon any public work in the State of Montana. Your question thus becomes whether or not the Board of County Commissioners or the School District Board of Trustees may, in the absence of statute, require that bids upon construction work be accompanied by a certain designated form of security.

Section 16-1025, Revised Codes of Montana, 1947, grants to the Board of County Commissioners the jurisdiction and power under such limitations and restrictions as are prescribed by law to make and enforce such rules for its government, the preservation of order and the transaction of business, as may be necessary.

Section 75-1624, Revised Codes of Montana, 1947, provides that the board of trustees of each school district shall have custody of all school property belonging to the district and shall have the power to transact all business necessary for maintaining schools and protecting the rights of the district.

Certainly the powers granted to Board of County Commissioners and School District Trustees by the statutes contained in the preceding two paragraphs are extensive enough, in my opinion, to include the authority to establish uniform regulations and procedures to be followed in the submission of bids for county or school district contracts. If in the exercise of their respective discretion and judgment the governing boards of counties and school districts decide that the requirement that bidders on county and school district contracts deposit security with their bids will insure the obtaining of responsible bidders upon such projects, I can conceive of no reason under the law why such a regulation cannot be promulgated and required.

It is therefore my opinion that bidders upon Rural Improvement District Works, Special Improvement District Works, and upon the construction of state buildings or the alteration, repair and improvement of state buildings and grounds must accompany such bids with designated security in the form of a legally sufficient certified check. In ad-

dition to the aforementioned situations wherein the security is required by statute, a Board of County Commissioners and a Board of School District Trustees may in the exercise of their respective discretion and judgment require that bidders upon county and school district contracts deposit security with their bids as a method and means of insuring that all such bidders are responsible parties.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.