

Opinion No. 13

**State Purchasing Department And
Agent—Sale of State Personal Property**

**Held: When selling personal property
of the State of Montana it is
legally possible to allow counties
and municipalities an oppor-**

tunity to bid on such property before it is submitted for sale to the general public.

April 24, 1951.

Mr. A. M. Johnson
State Controller and Ex-officio State
Purchasing Agent
Capitol Building
Helena, Montana

Dear Mr. Johnson:

The former State Purchasing Agent, Mr. Paul D. Golden, asked me whether it is legally possible when selling personal property of the State of Montana to allow counties and municipalities an opportunity to bid on such property before it is submitted for sale to the general public.

On the subject of selling and disposing of State personal property there are the following two statutes which I quote in part:

"The state purchasing agent shall have exclusive power, subject to the consent and approval of the state board of examiners, to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate and control the purchase, sale or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by any state institution or by any department of the state government . . ."
(Section 82-1906, Revised Codes of Montana, 1947)

"The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of the state government . . ."
(Section 82-1914, Revised Codes of Montana, 1947)

Although the law sets forth certain requirements when the State of Montana purchases most, if not all, materials, supplies, equipment and other personal property, there is no prescribed procedure when selling or disposing of State property. Where no procedure is

established by the Legislature to govern the manner of sale and disposal of property, the agency having that obligation to perform has been allowed an area of discretion in fulfilling that obligation. When construing the powers of the boards of county commissioners in cases where the boards have been given the power but no mode of procedure the Supreme Court of Montana has repeatedly said:

"It is a general rule that whenever a power is conferred upon the board of county commissioners, but the mode in which the authority is to be exercised is not indicated, the board in its discretion may select any appropriate mode or course of procedure."

Fisher v. Stillwater County, 81 Mont. 31, 261 Pac. 607

Franzke v. Fergus County, 76 Mont. 150, 245 Pac. 962.

State ex rel. Bowler v. Board of Commissioners of Daniels County, 106 Mont. 251, 76 Pac. (2d) 648.

State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 184 Pac. (2d) 998.

This rule would apply to the instant question.

It is true that there should not be an abuse of discretion and it is inherent in the law that in selling or disposing of State personal property the object is to obtain the greatest legitimate advantage for the State Government. If as an incident thereto a benefit can be extended to the political subdivisions of the State, I see no legal impediment.

Hence, it is my opinion that when selling personal property of the State of Montana it is legally possible to allow counties and municipalities an opportunity to bid on such property before it is submitted for sale to the general public.

Very truly yours,
ARNOLD H. OLSEN
Attorney General