Opinion No. 34

School and School Districts —
Transportation Contracts —
Responsible Bidders.

HELD: 1. The trustees of a school district are not authorized to accept a combination bid for contracts of transportation for two school bus routes when the advertisement for bids stated and requested bids for each route separately, and when the lowest bid from a responsible bidder for each route was rejected and a combination bid accepted with greater expense to the school district.

2. The board of trustees of a school district has discretionary power in determining the responsibility of bidders, but such discretionary power must be based on facts and is not an arbitrary power.

August 18, 1955.

Mr. B. Miles Larson
County Attorney
McCone County
Circle, Montana

Dear Mr. Larson:

You have requested my opinion as to whether the trustees of a school district may accept a combination bid for two transportation routes when the two routes were advertised as separate items. You state that separate bids were offered for the two routes which were lower than a combination bid for the two routes and the trustees accepted the combination bid.

Contracts for transportation of school children are covered in Section 75-3405, R.C.M., 1947. The portion of this section with which we are concerned reads as follows:

" . . . The board shall let the contract to the lowest responsible bidder; provided, that the board shall have the right to reject any and all bids."

The problem you present is whether a combination bid of two routes may be considered the lowest bid when bids were submitted for the two routes at an aggregate figure lower than that contained in the combina-

tion bid. While the trustees had the authority to request bids for the two routes as a unit, yet not having done so, bids must be considered only on the contracts as advertised. In 78 C. J. S. 1266, the text states:

" . . . A board of education may not let contracts for two different buildings to a bidder whose aggregate bid is the lowest, if contracts with responsible bidders might be made for a smaller sum by contracting separately for each building."

The above quoted is in accord with our statutory requirement that the contract shall be let to the lowest bidder. To accept a combination bid which will result in a greater cost to the school district and also vary from the request for bids contained in the advertisement would not be in the best interests of the school district and would also mislead bidders.

It is true that the trustees of a district have some discretionary power in determining the responsibility of bidders. In Hudson vs. the Board of Education, 41 Ohio, app. 402, 179 N.E. 701, the court recognized the limitation placed on a board of trustees in determining the responsibility of a prospective contractor. The Ohio Court quoted with approval the following:

"The term 'responsible' is not, however, limited to pecuniary ability . . . but pertains to many other characteristics of the bidder, such as his general ability and capacity to carry on the work, his equipment and facilities, his promptness, and **the quality of work previously done by him,** his suitability to the particular task, and such other qualities as are found necessary to consider in order to determine whether or not, if awarded the contract, he could perform it strictly in accordance with its terms." (Emphasis Supplied.)

It is therefore my opinion that the trustees of a school district are not authorized to accept a combination bid for contracts of transportation for two school bus routes when the advertisement for bids stated

and requested bids for each route separately, and when the lowest bid from a responsible bidder for each route was rejected and a combination bid accepted with greater expense to the school district.

It is also my opinion that the board of trustees of a school district has discretionary power in determining the responsibility of bidders, but such discretionary power must be based on facts and is not an arbitrary power.

Very truly yours,
ARNOLD H. OLSEN
Attorney General