

Opinion No. 5

**STATE PURCHASING AGENT; Bids; janitorial services—Section
82-1924, R.C.M., 1947.**

HELD: Contracts for janitorial services must be awarded by competitive bidding.

May 22, 1963

Honorable Walter Anderson
State Controller & ex-officio
Purchasing Agent
State Capitol
Helena, Montana

Dear Mr. Anderson:

You have advised me that you intend to engage an independent contractor to provide the janitorial and maintenance services in the Capitol complex. You wish to know if it will be necessary to award this contract by competitive bidding.

There is no question that the subject of the proposed contract is services. While some supplies are involved, i.e., furnishing soap and towels for washrooms, the contract is primarily one for the service of keeping state buildings clean. You ask if this is the type of service which may be purchased without competitive bidding.

In Opinion No. 49, of Volume 29, Report and Official Opinions of the Attorney General, I advised you that contracts for the preparation and service of meals need not be awarded by competitive bidding. The rationale of that opinion was that the preparation of food involved special skills which could not be measured by a monetary yardstick. It is the general rule that contracts for professional services and other services requiring special skill and training are not required to be let on bids. See 142 A.L.R. 542; 92 A.L.R. 837, 44 A.L.R. 1150; and 43 Am. Jur., **Public Works and Contracts**, Sec. 28.

However, where the service contracted for does not involve the exercise of special skills, training, taste or discretion, it would seem that the general policy of our statutes requiring competitive bidding for "public works" (Section 82-1924, R.C.M., 1947) should control. *Knights of Iron Horse v. Detroit*, 300 Mich. 467, 2 N.W. 2d 466. Since the work to be performed under the contract is not characterized by the employment therein of specialized, technical or artistic skills, nor are any such skills necessary to achieve standards of service reasonably to be expected, it should not be exempt from the general legislative policy that the interests of the State

are best served by awarding contracts through competitive bidding.

The distinction I have drawn can be simply illustrated. Under our statutes and the law generally, competitive bidding is not required before hiring an artist to paint a mural. It is required to hire a painter to paint a wall.

It is therefore my opinion that the proposed contract for janitorial services must be awarded by competitive bidding.

Very truly yours,
FORREST H. ANDERSON
Attorney General