

VOLUME NO. 38

OPINION NO. 101

CONTRACTS - County vehicle lease, lease with purchase option, bid requirements;

COUNTIES - Contract for lease of county vehicles, lease with purchase option, bid requirements;

PURCHASING - County vehicle lease, lease with purchase option, bids for.

MONTANA CODE ANNOTATED - Sections 7-5-2301, 7-5-2307, 7-7-2101;

OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 56 (1979).

HELD: A county lease contract with no purchase option is not subject to the bidding requirements of section 7-5-2301, MCA. A lease contract with a purchase option is subject to such requirements if the total amount of the lease payments, together with the purchase option price, exceeds \$10,000.

27 August 1980

George W. Wells, Chairman
Sanders County Board of Commissioners
Sanders County Courthouse
Thompson Falls, Montana 59873

Dear Mr. Wells:

You have requested my opinion on the following question:

Whether a lease contract relating to sheriff's department vehicles is subject to the bidding requirements of section 7-5-2301, MCA, where the lease payments would total over \$10,000 per year.

Section 7-5-2301, MCA, provides:

(1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind for which must be paid a sum in excess of \$10,000 or for the construction of any building, road, or bridge for which must be paid a sum in excess of \$10,000 shall be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published in the official newspaper of the county at least once a week for 3 consecutive weeks before the date fixed therein for receiving bids.

(3) Every such contract shall be let to the lowest and best responsible bidder.

By its terms section 7-5-2301, MCA, deals with "contract[s] for the purchase of any vehicle...." I cannot conclude that a contract for the lease of a vehicle is necessarily covered by section 7-5-2301, MCA. First, legislative intent governs

the interpretation of the statute and, if possible, that intent must be determined from the plain meaning of the words used. Haker v. Southwestern Ry. Co., ___ Mont. ___, 578 P.2d 724, 727 (1978). "Purchase" and "lease" have different meanings and there is nothing in the statute indicative of a legislative intent to include "lease" within the meaning of "purchase."

In addition, while the Montana Supreme Court has not squarely addressed the issue, other courts have found a controlling distinction between purchase and lease contracts where statutes analogous to section 7-5-2301, MCA, are involved. See Scott v. Town of Bloomfield (N.J. 1967) 229 A.2d 667. Compare Holtz v. Babcock, 143 Mont. 341, 390 P.2d 801 (1963).

Finally, a separate statute in county contract law deals specifically with one type of lease contract. That provision, section 7-5-2307, MCA, states:

Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this part shall apply thereto and govern and control the same.

If possible, the above provision should be interpreted to insure coordination with section 7-5-2301, MCA. Hostetter v. Inland Development Corp. of Montana, 172 Mont. 167, 171, 561 P.2d 1323 (1977). Read together, sections 7-5-2301 and 7-5-2307, MCA, have the effect of bringing leases with purchase options, but not other leases, within the category of county contracts that may be subject to advertised bidding requirements.

It is clear that the total amount involved in the lease contract, rather than the amount to be paid each year must be considered in determining whether the advertised bidding requirements apply. Section 7-5-2301, MCA, speaks in terms of the total sum to be paid by the county, and sets \$10,000 as the sum which triggers bidding requirements. If the applicable statutes are to be given effect, in my opinion

the amount that is stated in the purchase option must also be considered. For example, if a contract calls for lease payments of \$3,000 per year for three years and includes a purchase option that may be exercised upon payment of a sum in excess of \$1,000, the total sum involved would be more than \$10,000. That type of contract would be subject to the bidding requirements of section 7-5-2301, MCA.

Your attention should also be drawn to section 7-7-2101(2), MCA, which requires voter approval before a county may incur an indebtedness to an amount exceeding \$40,000 for any single purpose. In 38 Op. Att'y Gen. No. 56 (1979), I concluded that section 7-7-2101(2) applies: (1) whether annual lease payments do or do not exceed \$40,000, so long as the total indebtedness exceeds that amount; (2) where the county has an option to purchase for a payment of less than \$40,000, if an indebtedness in excess of \$40,000 will nevertheless be incurred; and (3) whether or not the contract includes an option to cancel at any time. If the contract in question would obligate the county to incur an indebtedness in excess of \$10,000, the requirement of section 7-7-2101, MCA, must be met.

THEREFORE, IT IS MY OPINION:

A county lease contract with no purchase option is not subject to the bidding requirements of section 7-5-2301, MCA. A lease contract with a purchase option is subject to such requirements if the total amount of the lease payments, together with the purchase option price, exceeds \$10,000.

Very truly yours,

MIKE GREELY
Attorney General