

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 27

CONTRACTS - County purchases: bidding requirements;
COUNTY GOVERNMENT - Purchase contracts: competitive
bidding requirements;
PURCHASING - County contracts: competitive bidding
requirements;
MONTANA CODE ANNOTATED - Sections 7-5-2301, 7-5-2302,
7-5-2303, 7-5-2304;
SESSION LAWS OF 1981 - House Bill 256, chapter 134.

HELD: The 1981 amendments to the statutes on county
purchase contracts will have the following
effect after October 1, 1981:

1. Purchases for amounts of \$10,000 or less
may be accomplished without competitive
bidding.
2. Purchases for amounts between \$10,000 and
\$25,000 may, at the discretion of the
county governing body, be accomplished

OPINIONS OF THE ATTORNEY GENERAL

through competitive advertised bidding, competitive nonadvertised bidding, or public auction.

3. Purchases for amounts exceeding \$25,000 must be accomplished through competitive advertised bidding only.

17 July 1981

Donald A. Ranstrom, Esq.
Blaine County Attorney
Blaine County Courthouse
Chinook, Montana 59523

Dear Mr. Ranstrom:

You have requested my opinion on the following question:

Under House Bill 256 (1981 Mont. Laws, ch. 134), relating to county purchase contracts, what are the proper limits for which advertised, as opposed to nonadvertised, competitive bidding is required?

In 1981 the Montana Legislature amended existing statutes on competitive bidding for certain purchases by county governing bodies. 1981 Mont. Laws, ch. 134 (HB 256). Those amendments, which will become effective on October 1, 1981, basically relate to the permissible methods by which counties may purchase vehicles, machinery, equipment, and materials costing between \$4,000 and \$25,000.

Under currently applicable Montana law, county purchase contracts calling for expenditures of \$4,000 or less are not subject to the requirement of competitive bidding. §§ 7-5-2301(1), 7-5-2302(1) MCA. Purchases in amounts between \$4,000 and \$10,000 must be undertaken either through competitive nonadvertised bidding pursuant to section 7-5-2302(1), MCA, or at public auction pursuant to section 7-5-2303, MCA. When the amount of the purchase exceeds \$10,000, competitive advertised bidding is required by section 7-5-2301(1), MCA. None of the general competitive bidding provisions is applicable to county printing contracts or to emergency purchases as defined in section 7-5-2304, MCA.

OPINIONS OF THE ATTORNEY GENERAL

House Bill 256 essentially broadens the discretion of county governing bodies in the area of purchase contracts. After October 1, 1981, the minimum purchase amount subject to competitive bidding requirements will increase from \$4,000 to \$10,000. HB 256, § 2. Section 7-5-2301(1), MCA, as it pertains to purchase contracts, was not amended and will therefore retain its requirement of competitive advertised bidding for purchases in excess of \$10,000. Section 7-5-2302(1), MCA, on the other hand was amended to change the purchase amounts subject to nonadvertised bidding to sums between \$10,000 and \$25,000. Likewise, section 7-5-2303, MCA, as amended, will allow purchases at public auction of vehicles, machinery, and materials costing less than \$25,000. HB 256, § 3.

The language in both section 7-5-2301(1), MCA, and section 7-5-2302(1), MCA, is mandatory in nature and thus creates an apparent conflict as to the proper method of competitive bidding after October 1, 1981, on purchase contracts for amounts between \$10,000 and \$25,000. The amendment to section 7-5-2303, MCA, raising the permissible purchase price at public auction, also seems to be incompatible with the requirement for advertised bidding in section 7-5-2301(1), MCA. Both section 7-5-2302, MCA, and section 7-5-2303, MCA, however, contain specific provisions stating that compliance with their requirements on nonadvertised bidding and public auctions is to be considered the equivalent of meeting the requirements of section 7-5-2301, MCA. When all the statutory provisions are read together in such a manner as to reconcile potential conflicts and to give effect to both the amended and unamended sections of the statutes, they must be interpreted as giving county governing bodies the option of following either section 7-5-2301, section 7-5-2302, or section 7-5-2303, MCA, when undertaking purchase contracts for amounts between \$10,000 and \$25,000.

THEREFORE, IT IS MY OPINION:

The 1981 amendments to the statutes on county purchase contracts will have the following effect after October 1, 1981:

1. Purchases for amounts of \$10,000 or less, may be accomplished without competitive bidding.

OPINIONS OF THE ATTORNEY GENERAL

2. Purchases for amounts between \$10,000 and \$25,000 may, at the discretion of the county governing body, be accomplished through competitive advertised bidding, competitive nonadvertised bidding, or public auction.
3. Purchases for amounts exceeding \$25,000 must be accomplished through competitive advertised bidding only.

Very truly yours,

MIKE GREELY
Attorney General