



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

*Reinstated by
amendment to
art 2368
overruled by court
judgment Sam F. Pate
vs Concho County
D.C. Concho County
no 9581*

GERALD C. MANN
ATTORNEY GENERAL

Hon. T.K. Wilkinson
County Auditor
Hill County
Hillsboro, Texas

Dear Sir:

Opinion No. O-1317

Re: (1) Can the commissioners' court lease or rent, with the option to purchase, road machinery, pickups or trucks, warehouses for the storage of equipment, without advertising for bids, when the total rental exceed \$150.00?

(2) Can the commissioners' court declare an emergency, and purchase equipment in excess of \$150.00?

Your request for an opinion on the above stated questions has been received by this department.

Under constitutional sanction, the Legislature has delegated to the counties of this state, acting through the commissioners' court, the power to lay out, construct, repair and maintain public roads. Article 3, § 52, Article 11, § 2, of the Constitution, Articles 2521 and 1859, Revised Civil Statutes, 1925. But as said in 11 TEX. JUR. at p. 632:

"The authority of the commissioners' court as the governing body of a county to make contracts in its behalf is strictly limited to that conferred either expressly or by fair or necessary implication by the constitution and the laws of the state."

Also see the cases of --

CHILDRESS COUNTY v. STATE, 92 S.W. (2d) 1011;
ROPER v. HALL, 280 S.W. 289, and
LASSITER v. LOPEZ, 217 S.W. 373.

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We are unable to find any authority empowering commissioners' court to lease or rent road machinery and equipment, with the option to purchase.

Article 1659, Revised Civil Statutes, 1925, as pertinent hereto, reads as follows:

"Supplies of every kind, road and bridge material or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners' court, has submitted the lowest and best bid." (Under-scoring ours).

This statute manifests a clear legislative intent to declare a public policy necessitating competitive bids upon all matters of expenditures and upon all purchase contracts by the county. See the case of *WIATT METAL & BOILER WORKS v. FANNIN COUNTY*, 111 S.W. (2d) 787. No cognizance is taken in such statute of a method whereby the commissioners' court could lease or rent machinery and equipment with the option to purchase; otherwise, it is submitted, competitive bids would likewise have been required in such case consistent with the public policy requiring competitive bids in all transactions involving the expenditures of money by the commissioners' court. Obviously, therefore, if it be held that the commissioners' court can lease or rent machinery and equipment, rather than purchase same as contemplated by the statute, a method would be created whereby, whether honestly or otherwise, the requirement of competitive bids could be evaded. To prevent this, the terminology of Article 1659, supra, as quoted, would have to be construed as including contracts, also, of lease and rental. It is believed that the language will not admit of such construction. As said by the court in the case of *GULF BITULITHIC CO. v. NUCKES COUNTY*, 297 S.W. 747, (reversed on other grounds, 11 S.W. (2d) 305), at p. 753:

"The whole spirit of the times, crystallized in the statutes and favored in the decisions construing those statutes, is to require public

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authorities empowered to expend public funds to award contracts for such expenditures only after notice and upon competitive bids. It would be subversive of that spirit, and in contravention of those statutes so construed, to give effect to the subterfuge resorted to in this transaction for the purpose of evading the law, and this court declines to lend its aid to that purpose."

We, therefore, respectfully advise that it is the opinion of this department that your first question should be answered in the negative; namely, that the commissioners' court cannot lease or rent, with the option to purchase, road machinery, pickups or trucks, warehouses for the storage of equipment. The question of advertising for bids, in such case, thereupon becomes immaterial.

You also ask this further question:

"Can the commissioners' court declare an emergency and purchase equipment in excess of \$150.00?"

We respectfully advise that it is our opinion, under the clear terms of Article 1659, Revised Civil Statutes, 1925, the commissioners' court cannot, by declaring an emergency, purchase equipment in excess of \$150.00 without advertising for competitive bids.

We trust this answers your inquiries satisfactorily.

Yours very truly

ATTORNEY GENERAL OF TEXAS

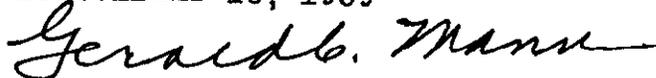
By



Wm. J. Fanning
Assistant

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APPROVED SEP 16, 1939



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