



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN, TEXAS 78711

CRAWFORD C. MARTIN  
ATTORNEY GENERAL

*See*

*H-163*

December 20, 1967

Honorable Wayland G. Holt  
District Attorney  
Scurry County Courthouse  
Snyder, Texas

Opinion No. M-172

Re: Whether a county commissioners court which desires to purchase equipment for general use by the county, requiring the expenditure of \$2,000.00 or more to be paid out of current funds, must advertise by newspaper publication (or posting) notice of its intention to take competitive bids under the provisions of Section 2, Article 2368a, Vernon's Civil Statutes, and related question.

Dear Mr. Holt:

In a recent letter to this office you requested our opinion in regard to the above referenced matters. We quote from your letter as follows:

"The members of the Commissioners Court of Scurry County have objected to the requirement of advertising for bids in making purchases of equipment for the use of the County where the purchase price of such equipment is such that the taking of competitive bids is necessary. They agree that where the price is \$2000.00 or more the taking of competitive bids is required but they do not agree that where the equipment is purchased with current funds advertising by publishing or posting, as required by Sec. 2 of Art. 2368a, Vernon's Annotated Texas Statutes, is necessary, and think it is exempt under the provisions of Sec. 5 of such Article 2368a. The County Auditor has announced his intention to refuse to approve any claim against the County for equipment purchased unless all the provisions of said Sec. 2 are complied with.

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"I will appreciate your answering the following questions:

"1. Where the purchase price of equipment for general use by the County is \$2,000.00 or more, thereby requiring the taking of competitive bids, is it necessary to advertise by publishing (or posting) giving notice of intention of the taking of such bids?

"2. Where there is a trade-in involved, does the term, 'purchase price,' mean the full price quoted or bid for the equipment to be purchased, or does it mean such full price less the amount allowed for the trade-in?"

Those portions of Article 2368a, Vernon's Civil Statutes, which are applicable to your first question read as follows:

"Sec. 2. No county, acting through its Commissioners Court, . . . shall hereafter make any contract calling for or requiring the expenditure or payment of Two Thousand Dollars (\$2,000.00) or more out of any fund or funds of any . . . county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, . . . without first submitting such proposed contract to competitive bids. Notice of the time and place when and where such contracts shall be let shall be published in such county (if concerning a county contract or contracts for such subdivision of such county) . . . once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. . . . If there is no newspaper published in such county, the notice of the letting of such contract by such county shall be given by causing notice thereof to be posted at the County Court House door for fourteen (14) days prior to the time of letting such contract. . . .

"Any and all such contracts or agreements hereafter made by any county. . . in this state, without complying with the terms of this Section, shall be void and shall not be enforceable in any court of this state, and the performance of same and the payment of any money thereunder may be enjoined by any property taxpaying citizen of such county. . .

" . . .  
"Sec. 5. The notice required in Sections 2 . . . shall not be applicable to expenditures payable out of current funds or bond funds, as above described, . . ."

Section 2 of Article 2368a provides that in certain emergency situations the commissioners court does not have to comply with the provisions of the section.

Section 2, Article 2368a, has been amended several times since its original enactment in 1931. The effect of these amendments, insofar as it is relevant to the question here involved is that, as originally enacted, the section applied only to contracts for the construction of public buildings or the prosecution and completion of any public work requiring an expenditure in excess of \$2,000.00. Whereas, the provisions of the section now apply to all expenditures of county funds in an amount of \$2,000.00 or more. That portion of Section 5 of Article 2368a, quoted above, has not been amended in any important respect since its original enactment in 1931 and was in fact re-enacted along with certain amendments to Section 5 and Section 6 of Article 2368a, which are not pertinent to the instant question by Senate Bill 105, Acts 52nd Legislature, Regular Session, 1951, Ch. 164, Sec. 1. Section 3 of Senate Bill 105 reads as follows:

"Sec. 3. The fact that the Attorney General of Texas has held that Sections 5 and 6 of said Chapter 163 were impliedly repealed by Chapter 173, page 238, Acts of the 50th Legislature, 1947, and questions have arisen as to the validity of contracts and warrants of counties and cities thereunder, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House to be suspended; and said Rule is hereby suspended, and this Act shall become effective immediately from and after its passage, and it is so enacted."

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Chapter 173, page 238 (actually page 283), Acts of the 50th Legislature, 1947, referred to in the above quotation from Senate Bill 105, was the first amendment to Section 2 of Article 2368a. Those portions of Section 2, which are relevant to this question, and which have been previously quoted herein, have not been materially altered since the passage of Senate Bill 105, referred to above. Section 3 of Senate Bill 105 expresses the clear legislative intent that Section 5 of Article 2368a should be operative subsequent to the enactment of Senate Bill 105, even though Section 5, Article 2368a, was impliedly repealed by the 1947 amendment to Section 2, Article 2368a. It is thus clear that the provisions of Section 2 of Article 2368a which require the giving of notice of intention to take competitive bids by newspaper advertisement (or posting) are not applicable to county expenditures for the purchase of equipment for general use by the county payable out of current funds, even if the expenditure is \$2,000.00 or more.

In answer to your second question, it is our opinion that when a county desires to make a contract under the competitive bidding requirements of Section 2 of Article 2368a the bids must be stated in terms of the gross price of the equipment to be purchased without considering any "trade-in". This is not to say that a commissioners court in the exercise of its sound discretion cannot require in the bid specifications that bidders must submit as a part of their bid the sum of money which they will allow the county for a designated "trade-in" as credit on the bid amount. We do not believe that it can be said as a matter of law that a commissioners court has abused its discretion if it includes such a specification in a bid proposal, and took the response of the bidders to this specification into account in determining which bidder was the "lowest responsible bidder".

#### S U M M A R Y

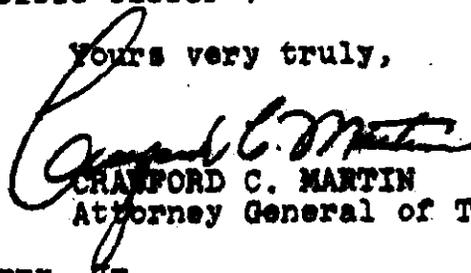
The provisions of Section 2 of Article 2368a, which require the giving of notice of intention to take competitive bids by newspaper advertisement (or posting), are not applicable to county expenditures for the purchase of equipment for general use by the county which are payable out of current funds, even if the expenditure is \$2,000.00 or more.

When a county desires to make a contract, under the competitive bidding requirements of Section 2 of Article 2368a, the bids must be

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stated in terms of the gross price of the equipment to be purchased without considering any "trade-in". However, in the exercise of its sound discretion, a commissioners court may specify in its bid proposal that bidders shall include in their bid the sum of money which they will allow for a "trade-in" as credit on the bid amount, and a commissioners court may consider the response of bidders to this specification in determining which bidder is the "lowest responsible bidder".

Yours very truly,



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