



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

May 7, 1968

Honorable Richard E. Rudeloff
County Attorney
Bee County Courthouse
Beeville, Texas

Opinion No. M-233

Re: In the purchase of electronic voting systems costing more than \$2,000.00, is it necessary for Bee County to submit to competitive bids as required by Article 2368a, Vernon's Civil Statutes?

Dear Mr. Rudeloff:

You request our opinion concerning the captioned question.

Article 7.15 of the Election Code of Texas is the statutory provision for electronic voting systems. Such systems to be used in Texas must first be approved by the Secretary of State in accordance with the terms and provisions of Subdivision 3 of said Article.

Subdivision 5 of Article 7.15 provides that the commissioners court may adopt one or more kinds of electronic voting systems, approved by the Secretary of State, for use in elections in part or in all of the election precincts in the county. This subdivision expressly states that if such system is adopted, not less than three precincts shall be furnished electronic voting systems and that any other authorized method of voting may be used in the remaining precincts in the county. No time is specified in this statute as to when the court may adopt the system, but presumably, in its discretion, the relative cost to the county would be a factor which the court would consider, and the system may well be adopted after the taking of bids from the interested parties.

Subdivision 8(a) of said statute directs that the commissioners court shall provide for payment for such voting equipment and the court is authorized to issue bonds, certificates of indebtedness, warrants or other obligations, which shall be a charge against the general revenue fund of the county. This subdivision further requires the commissioners court to issue such bonds and other obligations in the same manner and with the same authority as provided for the issuance of such bonds and other obligations by the general laws of this State. The necessary tax is directed to be set aside at the time of creating such obligations so as to meet the debt provisions as required by the Texas Constitution.

The proposed contract covering the particular voting system concerned is not before us. However, the company presenting the proposal has furnished a copy of its standard proposal which was presumably used in the instant situation. In this system the voter records his vote on a punch card, using equipment called the "vote recorder." The vote is recorded by pushing a pen-like stylus through a hole next to the party, candidate or issue of the voter's choice. The votes are later tabulated at the central counting station by standard electronic computers. The equipment and technical services are each an inseparable part of the system and the cost is lumped into one price, there being no cost figure shown for the equipment as such. The technical assistance or services are to be furnished in "all phases of planning and implementing" the project, but the bid proposal specifically recites in this connection that "Naturally, there is no charge for these services."

Section 2 of Article 2368a, Vernon's Civil Statutes, known as the Bond and Warrant Law of Texas, provides, in part, as follows:

"Sec. 2. No county, acting through its Commissioners Court, and no city in this State shall hereafter make any contract calling for or requiring the expenditure of payment of Two Thousand Dollars (\$2,000.00) or more out of any fund or funds of any city or 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, or upon such city, without first submitting such proposed contract to competitive bids.

. . . .

". . . .

"Any and all such contracts or agreements hereafter made by any county or city 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.

. . . ."

Contracts for personal or professional services are expressly exempt from the bidding requirements of the statute. We are familiar with the Texas cases holding that Article 2368a does not apply to contracts for personal or professional services. The contracts involved in those cases are clearly distinguishable from the proposed contract.

Under the proposed arrangement the parties may not be said to have made merely a contract for personal or professional services, with the cost of equipment requiring a certain payment, to wit, less than \$2,000.00, so as to escape the statutory requirements for competitive bidding. We are concerned here with an indivisible contract including a system calling for the use of certain equipment costing in excess of \$2,000.00, with no charge being made for the assistance to be furnished to train personnel to operate that equipment. This assistance is being furnished gratuitously and the contractual arrangement as presented cannot be held to be primarily one for assistance or services.

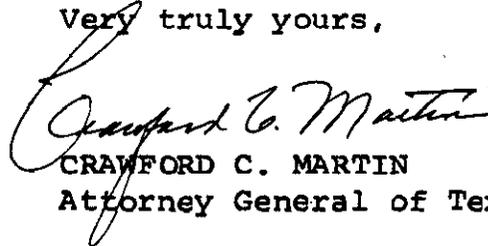
This office is not free to alter the terms of the particular contractual arrangement of the parties and we must take the facts as presented by the proposal. It is our opinion that the proposed contract in question involves the sale of electronic voting equipment of a value in excess of \$2,000.00 and that in entering into such a contract Bee County is required to comply with the bid requirements of Article 2368a.

We answer your question in the affirmative.

S U M M A R Y

In the purchase of electronic voting systems costing more than \$2,000.00, it is necessary for Bee County to submit to competitive bids, as required by Article 2368a, Vernon's Civil Statutes.

Very truly yours,


CRAWFORD C. MARTIN
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Assistant Attorney General

APPROVED: 
OPINION COMMITTEE

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