



# The Attorney General of Texas

July 13, 1982

MARK WHITE  
Attorney General

This Opinion  
Overrules M W 342

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Mr. George N. Rodriguez, Jr.  
County Attorney  
County of El Paso  
206 City-County Building  
El Paso, Texas 79901

Opinion No. MW-494

Re: Whether counties must  
require competitive bids on  
insurance contracts whose  
premiums exceed \$5,000.00

1607 Main St., Suite 1400  
Dallas, TX. 75201-4709  
214/742-8944

Dear Mr. Rodriguez:

You have asked whether article 2368a, V.T.C.S., or any similar statute, requires contracts for the purchase of insurance by counties to be awarded through the competitive bidding process.

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El Paso, TX. 79905-2793  
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Article 2368a, V.T.C.S., provides in part:

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Sec. 2. (a) No county, acting through its Commissioners Court, and no city in this state shall hereafter make any contract calling for or requiring an expenditure or payment in an amount exceeding five thousand dollars (\$5,000.00) 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.

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Lubbock, TX. 79401-3479  
806/747-5238

(b) ....

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Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens, or to preserve the property of such county, subdivision, or city, or when it is necessary to preserve or protect the public health of the citizens of such county or city, or in case of unforeseen damage to public property, machinery or equipment, this provision shall not apply; and provided further, as to contracts for personal or professional services; work done by such county or

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city and paid for by the day, as such work progresses; and the purchase of land and right-of-way for authorized needs and purposes, the provisions hereof requiring competitive bids shall not apply and in such cases the notice herein provided shall be given but only with respect to an intention to issue time warrants with right of referendum as contemplated in Sections 3 and 4 hereof respectively.

Section 2(a) is a comprehensive provision applying to "any contract" requiring an expenditure of over \$5,000. It is subject to the specific exceptions stated in section 2(b), including an exception for "personal or professional services." In addressing your question, we have to determine whether an insurance contract falls within the comprehensive terms of section 2(a) or whether an exception is applicable. The exception for personal and professional services is the only one which needs examination.

In Attorney General Opinion MW-342 (1981) we held that school districts need not let insurance contracts on competitive bids. That opinion construed section 21.901 of the Education Code which has since been amended without change in the language relied upon in Attorney General Opinion MW-342. Section 21.901 reads in part:

(a) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the purchase of any personal property shall be submitted to competitive bidding when said property is valued at \$5,000 or more.

(b) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding when said contracts are valued at \$5,000 or more.

(c) Nothing in this section shall apply to fees received for professional services rendered, including but not limited to architects fees, attorney's fees, and fees for fiscal agents.

....

(e) If a school building or school equipment is destroyed or severely damaged, and the school

board determines that the time delay posed by the competitive bidding process would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of such building or equipment may be made without resort to competitive bidding as otherwise required by this section.

Section 21.901 of the Education Code is structured differently from article 2368a, V.T.C.S. The Education Code provision states two categories of contracts subject to competitive bidding -- those for personal property and those for the construction, maintenance, repair, or renovation of any building or for the materials used in these projects. It is not apparent that these two categories cover every type of contract a school district might enter into. Nor is it apparent that the exceptions for professional services and for emergency repairs cover all contracts excluded from the competitive bidding requirements of section 21.901. See, e.g., Attorney General Opinion M-950 (1971) (school district may negotiate computer lease contract without competitive bids).

Attorney General Opinion MW-342 stated that an insurance contract did not fit squarely into the category of "personal property" or the exemption for "professional services" under section 21.901 of the Education Code. The services provided under it were significant enough to remove the contract from the category of "personal property," even though they did not constitute "professional services." Under section 21.901 it is unnecessary to show that an insurance contract is a contract for "professional services" to remove it from the competitive bidding requirement. It is only necessary to show that it cannot fairly be characterized as a contract for the purchase of personal property. The discussion in Attorney General Opinion MW-342 of the service aspect of an insurance contract must be read with section 21.901 in mind. It does not resolve the question before us concerning the construction of article 2368a, V.T.C.S.

Turning to your question, we next consider whether a contract for insurance constitutes a contract for personal or professional services within article 2368a, V.T.C.S. Attorney General Opinion MW-344 (1981) considered whether the Board of Trustees of Galveston Wharves must bid a contract for the services of a container terminal operator at the port. The opinion concludes that a contract to operate container terminal facilities was not a contract for personal services, even though the operation of the facilities was complex and technical, and even though it involved considerable labor costs. It relied on judicial definitions which indicated that a contract was one for "personal services" only if the contract price was largely for employee wages rather than for machinery, profit, taxes, insurance,

and other items. See Van Zandt v. Fort Worth Press, 359 S.W.2d 893 (Tex. 1962); Radio KOKE, Inc. v. Tiemann, 378 S.W.2d 952 (Tex. Civ. App. - Austin 1964, writ ref'd n.r.e.).

An insurance contract is clearly not a contract for personal services under the standard developed in Attorney General Opinion MW-344. In exchange for premiums paid under an insurance contract, the insured receives financial protection against stated risks. Incident to the provision of protection the insurance company provides various services such as claims processing and investment services. However, the costs of equipment, materials, other overhead, taxes, profits, and the cost of the financial protection itself contribute in large part to the total amount of premiums. Since the cost of employee wages does not form the major part of the contract price, an insurance contract is not a contract for personal services within article 2368a, V.T.C.S.

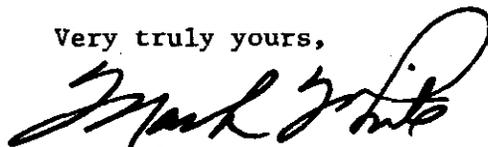
Attorney General Opinion MW-344 discussed the meaning of the "professional services" exemption in article 2368a, V.T.C.S. It relied on cases from other jurisdictions which emphasized the body of special knowledge attributable to a profession, the years of study necessary to attain competence, and the wide recognition of the profession and its standards of study. In our opinion, the provision of insurance coverage does not constitute the provision of professional services. See Attorney General Opinion MW-342 (1981). It is therefore subject to the competitive bidding requirements of article 2368a, V.T.C.S.

Your question concerns only the purchase of a contract for insurance coverage. We do not address the question of whether the employment of an insurance consultant would be within the exception for personal or professional services. Contracts for the purchase of insurance by counties are, however, required by article 2368a, V.T.C.S., to be submitted to competitive bids.

S U M M A R Y

Article 2368a, V.T.C.S., requires counties to award contracts for the purchase of insurance through the competitive bidding process.

Very truly yours,



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