



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 27, 1939

Mr. C. J. Wilde
County Auditor
Nueces County
Corpus Christi, Texas

Dear Sir:

Opinion No. O-535
Re: Commissioners' Court must advertise
for competitive bids.

This will acknowledge receipt of your letter of March 21, 1939, in which you submit for an opinion of this Department the following question:

"Would it be legal to advertise for bids when the person advertising has full knowledge of the fact that it would be impossible to receive competitive bids even though the person desiring to make the purchase wanted the specific type of machinery asked for?"

Article 1653, Revised Civil Statutes of Texas, 1925, 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. The county auditor shall advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisements shall state where the specifications are to be found,

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and shall give the time and place for receiving such bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and re-advertise for new bids. In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids."

It was held in the case of Wyatt Metal & Boiler Works vs. Fannin County, 111 SW (2nd) 787 that Article 1659, supra, manifests an intent on the part of the Legislature to declare a public policy necessitating competitive bidding. It was held in this case that a written contract or award whereby the Commissioners' Court attempted to ratify purchase of culverts from a manufacturer pursuant to advertisement for bids which described culvert by trade name was invalid under the provisions of Article 1659, requiring advertisement "according to specification:

You state in your inquiry that to establish certain specifications in the advertisement will have the effect of eliminating competitive bidding in that but one bid would be received. The Commissioners' Court is given broad discretionary powers with respect to establishing and setting specifications for equipment to be purchased by and used by the county. Having set those specifications they must then submit them by advertising the same to all those who care to bid. It is immaterial if but one person or firm cares to bid on the particular machinery desired by the county.

It is therefore the opinion of this Department and you are so advised that competitive bidding under the

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circumstances stated by you is not only legal but mandatory upon the Commissioners' Court.

Trusting that this satisfactorily answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*
Lloyd Armstrong
Assistant

~~REPLY~~
APPROVED:

J. F. Moore
FIRST ASSISTANT ATTORNEY GENERAL