



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

May 28, 1953

Hon. Mitchell Williams      Letter Opinion No. MS-44  
County Attorney  
Lynn County  
P. O. Box 275  
Tahoka, Texas

Re: The validity of the submitted road machinery contracts entered into by the Commissioners' Court of Lynn County.

Dear Sir:

You have requested an opinion on the validity of two road machinery contracts entered into by the Commissioners' Court of Lynn County.

The contract marked Exhibit A is referred to as a "machinery lease agreement." However, the terms of the contract provide for installment payments (referred to as rentals). It was provided that when the total sum is paid (\$15,040.00) the title to and ownership of the road machinery shall pass to and be delivered to Lynn County.

The contract marked Exhibit B provides for the "leasing" of road machinery valued at \$15,383.70 for a period of three years with option to purchase such machinery during the term of lease by payment of the full value of the road machinery (\$15,383.70).

These contracts constitute purchase contracts for road machinery [Attorney General's Opinion O-1680 (1940)]. Article 2368a provides:

"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 (\$2,000.00) Dollars 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. . ."

In Attorney General's Opinion O-1685 (1939) it was held that bid requirements of Article 1659 cannot be avoided

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in any manner, Likewise, bid requirements of Article 2368a cannot be avoided.

In construing similar contracts to the contracts referred to in your request it was held in Attorney General's Opinion O-1680 (1940):

"The so-called lease is no more than a sale of the machinery to the county. Therefore, under the facts stated the court is attempting to do indirectly what it is prohibited from doing directly; that is, to make a purchase without advertising for bids as required by law.

"In view of the foregoing, you are respectfully advised that it is the opinion of this Department that the above mentioned contract is void."

We are unable to find any provisions in the contracts submitted by you that would justify a different construction. Under the contract marked Exhibit A Lynn County will receive title to the road machinery on the payment of the value of the road machinery. Under the contract marked Exhibit B Lynn County will receive title to the road machinery on the payment of the total value of such machinery. Since the contracts called for an expenditure of money in excess of \$2,000.00 it is immaterial whether the contracts constitute a rental agreement or a sales contract.

In Patten v. Concho County, 196 S.W.2d 833 (Tex.Civ. App. 1946) it was held that road machinery could be purchased without advertising for bids. However, the Legislature amended article 2368a so as to require competitive bids on any and all contracts on behalf of the county requiring an expenditure of \$2,000.00 or more. Att'y Gen. Op. V-600.

In view of the foregoing you are advised that the contracts submitted to this office are void. Since the bid requirement in Article 2368a has not been complied with, it is unnecessary for this office to determine whether the contracts constitute a debt in violation of Section 7 of Article XI of the Constitution of Texas.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By

John Reeves  
Assistant

JR:am:wb