

JAILS: Building jail and constructing vaults are
CONTRACTS: separate projects, to be paid for out of
COUNTY COURT: separate funds, and contracts for each
project must be let to lowest bidder.

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Honorable Edwin W. Mills
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Osceola, Missouri

Dear Sir:

We acknowledge receipt of your letter requesting an official opinion, and reading as follows:

"Our circuit court, under the authority of Sec. 11041, being satisfied that a necessity then existed for the assessment, levy and collection of taxes for the erection of a jail, commanded the county court of St. Clair County to have the necessary assessment, levy and collection of taxes for the purpose of erecting a jail, made.

"This was done and a substantial fund has thus been created. The circuit court in its order expressly directed that no portion whatever of this jail fund should be diverted or used for any other purpose.

"In the light of this prohibition, it seems clear that none of the existing jail fund can be used for much-needed record vaults and other desirable improvements which the court would like to have installed.

"This county owns an antiquated and inadequate jail - built in 1867. It has no detention room for juveniles as has long been required by statute; neither does it have a cell where a woman prisoner can be incarcerated.

"The present jail location, while owned by the county, is so undesirable and the local sentiment against using the site for a new jail,

that the county court favors building the proposed jail which will include living quarters for the sheriff and his family, storage room for his car, etc., as an addition to the present court house on the courthouse square, in Osceola, the county seat.

"The question is - and the court will greatly appreciate your opinion on it -:

"Can the county court, while erecting the jail as an addition to the present court house, also, at the same time and under the same contract, safely erect and complete, out of funds other than the special jail fund, vaults for the storage of public records, suitable rooms for the same and other related improvements?

"The county court feels that it will be desirable, from the standpoints of economy and the securing of a uniform, satisfactory and presentable building, that all the proposed work be advertised, let, superintended, erected and completed under one contract by the same bonded contractor, the cost of the jail to be paid out of the special jail fund and the cost of the record vaults and other related improvements to be paid out of the general revenue or other fund.

"Is there any legal objection to this arrangement?

"I will greatly appreciate the opinion of your office on this proposition."

A careful study of the facts in your request indicates that there are two distinct and separate construction projects to be completed. One is the erection of a county jail, and the other is the building and installation of vaults and suitable rooms which will be used for the storage of public records.

Under the authority of Section 11041, R. S. Mo. 1939, the Circuit Court of St. Clair County ordered the county court of that county to have an assessment, levy and collection of taxes made; and, in compliance with such order, a particular fund was

created for the sole purpose of erecting a jail.

Since, under the order of the court, none of the jail fund can be used for any other purpose, the necessary expense to be incurred in installing vaults and suitable rooms for the storage of public records must be paid from another separate fund.

The question is asked: Can both construction projects be completed under one and the same contract?

Article 4, Chapter 100, R. S. Mo. 1939, pertains to the erection and maintenance of county buildings. Section 13702 of this article provides:

"There shall be erected and maintained in each county, at the established seat of justice thereof, a good and sufficient court house and jail."

Section 13715 provides:

"Whenever the county court of any county shall think it expedient to erect any of the buildings aforesaid, the building of which shall not be otherwise provided for, and there shall be sufficient funds in the county treasury for that purpose, not otherwise appropriated, or the circumstances of the county will otherwise permit, they shall make an order for the building thereof, stating in such order the amount to be appropriated for that purpose, and shall appoint some suitable person to superintend the erection of such buildings, who shall take an oath or affirmation faithfully and impartially to discharge the duties enjoined on him by this article."

Section 13723 provides:

"When the ground for erecting any public building shall be designated, as aforesaid, the superintendent shall prepare and submit to the county court a plan of the building to be erected, the dimensions thereof, and

the materials of which it is to be composed, with an estimate of the probable cost thereof."

Section 13724 in part provides:

"When any plan shall be approved by the county court, the superintendent shall immediately advertise for bids for the erection and construction of same, stating in such advertisement a description of such building or buildings, and shall contract with the person or firm who will agree to do the work and furnish the necessary material on the lowest and best terms not exceeding the amount appropriated or set apart for such building or buildings: * * * * *

The sections just quoted only pertain to the erection of public buildings. Regarding plans for erecting a jail, which is a public building, Section 13724, supra, would have to be complied with. The superintendent must advertise for bids for the erection and construction of such a building, and must contract with the person or firm who agrees to do the work on the lowest and best terms not exceeding the amount appropriated for the building.

Section 13730, R. S. No. 1939, empowers the county court to make repairs and improvements on public buildings, which would include the installation and construction of vaults and suitable rooms for storage space. This section reads:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

In the case of State ex rel. Carter v. Bollinger, 117 S. W. 1132, 219 No. 204, a suit was brought by certain taxpayers of Stoddard County to prohibit the county court from building a vault and repairing the court house. In ruling that the county court could make such improvements and repairs, the court said at S. W. 1. c. 1137:

"* * * * Section 6736, Rev. St. 1899 (Ann. St. 1906, p. 3322), reads as follows: 'The county court of each county shall have the power from time to time to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall moreover take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.' Clearly that section of the statute gives the county court of Stoddard county jurisdiction over the subject-matters complained of in the petition; and the pleadings, evidence, and report of the referee filed herein disclose the fact that the county has sufficient money on hand with which to pay for the proposed improvements. That being true, then the county court of that county was acting within its jurisdiction, and prohibition will not lie.
* * * *"

Although Section 13730, supra, empowers the county court to construct vaults and rooms for storage space, we find no provision in Article 4, of Chapter 100, requiring the county court to advertise for bids to make such improvements and letting the contract to the lowest bidder, as is required in the case of erecting a public building. However, in Article 2, Chapter 73, R. S. Mo. 1939, which pertains to the county budget law, Section 10932 in part provides:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment, or services other than personal made by the officer in charge of purchasing in any county having such officer. No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of

the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating: Provided, that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it shall be sufficient for the accounting officer to certify that such bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of such bonds yet to be sold or of such taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least 500 copies per issue, if there be such, except that such advertising shall not be required in case of contracts or purchases involving an expenditure of less than \$500.00, in which case notice shall be posted on the bulletin board in the courthouse. * * * * *"
(Emphasis ours.)

This section and Section 13730, supra, are not repugnant to each other and relate to the same subject matter. Therefore, they are considered to be in pari materia, and should be construed together. *Soble v. Hermann*, 9 S. E. (2d) 459, 175 Va. 489.

In *Layne Western Co. v. Buchanan County*, 85 Fed. (2d) 243, the County of Buchanan was sued on a contract entered into with the defendant through the County Planning and Recreation Commission. The plaintiff had been given the contract to drill two wells without there having been any advertisement for bidders. The County Planning and Recreation Act empowered the Commission to construct and maintain improvements pertaining to the development of recreational projects, but nothing in the act required advertising for bids when any construction work was to be done. A judgment adverse to the plaintiff was rendered, because that portion of the county budget law pertaining to the execution of

contracts and specifically relating to letting contracts to the lowest and best bidder was not complied with. In the opinion of the court, it was said at l. c. 346 that:

"* * * * The Budget Act clearly applies to the county court, and it follows that it applies also to all agencies of the court. * * * * *"

And at l. c. 347 appears the following:

"Finally, the appellant contends that the Commission Act is a special act, and therefore must take preference over the Budget Act, which is general. If there were any repugnancy between the two acts, the contention might have merit. The Commission Act, however, nowhere says that competitive bidding may be dispensed with in contracts made by the commission. The rule is applicable, therefore, that where statutes are in pari materia they are to be construed as one system and governed by one spirit and policy. Moore v. C. & O. Ry. Co., 291 U. S. 205, 214, 54 S. Ct. 402, 78 L. Ed. 755; Kornin v. City of Coquille, 143 Or. 127, 21 P. (2d) 1078, 1080, and Tragessor v. Cooper, 313 Pa. 10, 169 A. 376, 377, are cases analogous to the instant case. In each of the cited cases there existed a general statutory or charter provision prescribing a method of letting contracts by competitive bidding. The immediate provision empowering the governmental agency to contract lacked these requirements. It was held, however, that the officers who had made the contracts in question could act in the premises only so long as they kept within the competitive bidding requirements expressed in the general statute or the charter because such requirement constituted an expression of public policy which need not be repeated in the particular statute or charter and that it could not be excluded unless an intent to exclude clearly appeared.

"It is clear in this case that it was the intent of the Legislature of Missouri in enacting

the County Budget Law and including therein the requirement that 'all contracts' should be let upon competitive bidding to declare a public policy. That such a policy is wise is evidenced by the universality of such statutes found in the laws of Congress and of all the state Legislatures. At any rate, it is for the Legislatures and not the courts to pass upon their wisdom."

Therefore, applying the rule laid down in this case, it would not be proper to let a contract for the separate project of constructing vaults and rooms for storage without first advertising for bids and letting such contract after due opportunity for competitive bidding to the lowest and best bidder. Furthermore, it would be in violation of Section 39 (4), Article III, of the Constitution of 1945, to pay a claim under a contract let for this particular construction project without having competitive bidding on the job, as provided by statute. This section provides as follows:

"The general assembly shall not have power:

"(4) To pay or to authorize the payment of any claim against the state or any county or municipal corporation of the state under any agreement or contract made without express authority of law;"

CONCLUSION

It is, therefore, the opinion of this department that for the two separate construction projects, to wit: Building a jail and constructing vaults and rooms for storing public records, there would have to be an advertisement for bids incorporating a description of the two projects, so as to give interested persons or firms an opportunity to bid competitively on such projects separately or on both. The contracts would have to be let to the lowest bidder on each project, which would necessarily require separate contracts, if the lowest bidder on the building of the jail and constructing the vaults and storage rooms were separate individuals. If the lowest bidder on both

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projects was the same person, both projects could be completed under one contract; but, since the money to pay for the completion of each project must come from separate funds, the contract should be divisible in form, keeping separate the description of the work to be done relating to each project, and separately indicating the amount of money to be expended on each project, specifying the fund from which the money is to come.

Respectfully submitted,

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APPROVED:

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RFT:LR