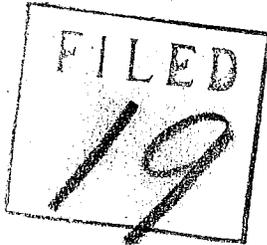


COUNTY PURCHASES: In second class county, court has discretion in determining whether or not annual purchases need  
COUNTY BUDGET LAW: be advertised. Contracts for repair of road machinery under certain circumstances need not be let on competitive bidding.



January 27, 1955

Mr. Frank D. Connett, Jr.  
Prosecuting Attorney  
Buchanan County  
St. Joseph, Missouri

Dear Sir:

We have received your requests for two opinions of this office on matters relative to purchases by Buchanan County, which is a county of the second class. Your first question reads as follows:

"This office would like to have your opinion upon the following question:

Is it necessary, according to Section 50.660 R.S. Mo., 1949, and 50.760 R.S. Mo., 1949, for an office holder or the county to request bids for the purchase of some item which is supplied by only one supplier?

"An example of the above situation would be the purchase of a set of the United States Code Annotated, Title 18, a set of Martindale-Hubbell, or film to be used by the County Recorder which is supplied only by the manufacturer of the machine.

"In the past we have posted bids even though we knew there was only one person who would be able to supply the article needed. In the event the amount was in excess of \$500.00, it necessitated newspaper advertising which cost the county money. Since this seems to be a useless act, I am wondering if it is necessary."

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The pertinent portions of Section 50,660, RSMo 1949, read as follows:

"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. \* \* \* 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 five hundred 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 five hundred dollars, in which case notice shall be posted on the bulletin board in the courthouse; provided, however, that it shall not be necessary to obtain bids, as herein provided, on any purchase or purchases, in the amount of twenty-five dollars or less, made from any one person, firm or corporation during any period of thirty days. All bids for any contract or purchase may be rejected and new bids advertised for. Contracts which provide that the person contracting with the county shall, during the term of the contract, furnish to the county at the price therein specified the supplies, materials, equipment, or services other than personal therein described, in such quantities as may be required, and from time to time as ordered by the officer in charge of purchasing during the term of the contract, need not bear the certification of the accounting officer, as herein provided; but all orders for such supplies, materials, equipment, or services other than personal shall bear such certification.

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In case of such contract, no financial obligation shall accrue against the county until such supplies, materials, equipment or services other than personal are so ordered and such certificate furnished."

Section 50.760, RSMo 1949, reads as follows:

"It shall be the duty of the judges of the county court in all counties of the second class, or on before the first day of February of each year, to determine the kind and quantity of supplies, including any advertising or printing which the county may be required to do, required by law to be paid for out of the county funds, that will be necessary for the use of the several officers of such county during the current year, and to advertise for sealed bids and contract with the lowest and best bidder for such supplies. Before letting any such contract or contracts the court shall cause notice that it will receive sealed bids for such supplies, to be given by advertisement in some daily newspaper of general circulation published in the county, such notice to be published on Thursday of each week for three consecutive weeks, the last insertion of which shall not be less than ten days before the date in said advertisement fixed for the letting of such contract or contracts, which shall be let on the first Monday in March, or on such other day and date as the court may fix between the first Monday of March and the first Saturday after the second Monday in March next following the publication of such notice; provided, that if by the nature or quantity of any article or thing needed for any county officer in any county of this state to which sections 50.760 to 50.790 apply, the same may not be included in such contract at a saving to such county, then such article or thing may be purchased for such officer upon an order of the county court first being made and entered as provided in sections 50.760 to 50.790; and

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provided further, that if any supplies not included in such contract be required by any such officer or if the supplies included in such contract be exhausted then such article or thing may be purchased for such officer upon order of the county court first being made and entered of record as provided in sections 50.760 to 50.790."

Section 50.770, RSMo 1949, reads as follows:

"The word 'supplies,' as used in sections 50.760 to 50.790 shall be held and construed to include every article or thing for which payment may by law be required to be made by the county, and including advertising and printing required to be done by the county."

These statutes appear to deal with the same subject matter but on their face contain some apparently conflicting provisions. Section 50.660 requires advertisement in newspaper of contracts involving purchases of over five hundred dollars. Section 50.760 requires advertisement without reference to the amount involved. Section 50.760, in view of its provision regarding the omission of items which may not be included in the contract at a saving to the county, apparently vests some discretion in the county court to determine which items should be submitted to bids. Section 50.660 is inflexible in its term. It was so construed in the case of Layne-Western Co. v. Buchanan County, Mo., 85 F. (2d) 343. In that case the court, in discussing what is now Section 50.660, stated, 75 F. (2d) 1.c. 347:

" \* \* \* The statute in the instant case, however, provides that 'all contracts and purchases' shall be let after competitive bidding. It would be hard to imagine a more inclusive statute. \* \* \*"

The answer to your question appears to us to depend upon a resolution of the conflicting provisions of these two sections. Both were passed at the same session of the General Assembly. What is now Section 50.660 is originally found in Laws of 1933, page 340, and what is now Section 50.760 originally appeared in Laws of 1933, at page 201. Being in pari materia they should be construed together, if possible, in order to effectuate the intention of the Legislature.

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It appears to us that Section 50.760 has reference to recurrent items of annual expenditure which are required by the various county officers and which may by pooling purchases be obtained at advantageous prices to the county.

It would appear to us to include the ordinarily foreseeable items to be used by the various county officials in the conduct of their offices. The items referred to in your opinion request seem to us to be such as would be ordinarily foreseeable to be required in the course of the year and would be required to be purchased from year to year. They are items which could and should be submitted to the county court in the annual budget request for the offices involved. Therefore, they would appear to us to fall within the provisions of Section 50.760.

Falling under provisions of this section, we are of the opinion that, in view of the provision found therein, "that if by the nature or quantity of any article or thing needed \* \* \* the same may not be included in such contract at a saving to such county," the county court is afforded some measure of discretion in determining whether or not the particular items should be included in those advertised. If the court can say with certainty that by virtue of the fact that such items are obtainable from only one supplier and therefore could not be included in the annual contract at a saving to the county, then we believe that direct purchases, without competitive bidding, may be made by compliance with the provisions of Section 50.780, RSMo 1949. It does not appear to us that, as to such items, upon the court's determination that advertising is not required under Section 50.760, advertisements and bids would then be required in accordance with Section 50.660. So to hold would render the portion of Section 50.760 conferring discretion upon the county court meaningless.

Your second question is as follows:

"It is my interpretation of Section 50.660 R.S.Mo., 1949, that the county or county officers do not have to advertise or take bids on contracts for personal services.

"Assuming that to be correct, would the repair of a single item of county equipment, such as highway department machinery in instances where the repair must be done by the manufacturer or is of such a nature that it would be impossible to ascertain in advance the amount of time or what parts would be needed to do the repair, be a

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personal service for which the county might contract without taking bids."

The general rule regarding the application of statutory provisions such as this to contracts involving personal services is stated in 43 Am. Jur., Public Works and Contracts, Section 28, page 770, as follows:

"As a general rule, statutory and constitutional provisions prohibiting letting of contracts by a state or by municipal subdivisions, without first advertising for bids, do not apply to contracts for professional services, such as the services of physicians or attorneys, or to contracts requiring special training and skill, such as contracts calling for the services of architects, engineers, accountants, or the like, and such contracts may be let without bids. \* \* \*"

It appears to us that this principle would be applicable to the question presented by you. The submission to bids of a contract for the repair of road machinery, when it was unknown as to the nature of the repairs required, would seem to be a futile requirement. No one would be in a position to bid on the job at a gross price without knowing the nature of the repairs required to be made and any attempt to let the contract on the basis of an hourly figure for labor plus necessary parts would be a hit-or-miss matter insofar as a saving to the county is concerned. There would certainly be no way of determining whether or not a person who would make the lowest hourly bid would be able actually to complete the contract at a lesser cost than the person who might be more experienced in making repairs on the machinery yet make a bid at a higher hourly rate. Therefore, we are of the opinion that advertisement would not be required under the circumstances set forth in your letter.

#### CONCLUSION

Therefore, it is the opinion of this office that in a county of the second class the county court, under the provisions of Section 50.760, RSMo 1949, has some discretion in determining whether or not items of annual recurring expense should be submitted to bids upon public advertisement and that if the county court determines that by reason of the fact that such items are

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obtainable at only a single source of supply, and therefore could not be included in the annual contract at a saving to the county, inclusion therein is not required and such items may be purchased directly in accordance with Section 50.780, RSMo 1949. We are further of the opinion that Section 50.660, RSMo 1949, does not require the advertisement and the letting of a contract on competitive bids for the repair of highway department machinery where the repair must be done by the manufacturer or is of such a nature that it would be impossible to ascertain in advance the amount of time or parts needed to do the repair.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON  
Attorney General

RRw:ml