

**LETTER OPINION**  
**2004-L-44**

June 28, 2004

Mr. Richard J. Riha  
Burleigh County State's Attorney  
514 E Thayer Ave  
Bismarck, ND 58501-4413

Dear Mr. Riha:

Thank you for your letter relating to county bidding requirements under N.D.C.C. §§ 11-11-26 through 11-11-28, as well as the procurement process under N.D.C.C. § 54-44.4-02. You indicate the county is interested in purchasing two-way radios for the sheriff's department through a contract obtained by the Office of Management and Budget.

It is my opinion that N.D.C.C. §§ 11-11-26 through 11-11-28 do not require Burleigh County to advertise for bids when purchasing two-way radios for the Burleigh County Sheriff's Department; Burleigh County may purchase two-way radios through a purchasing group organized pursuant to a joint powers agreement under chapter 54-40.3; there is no requirement that Burleigh County use the North Dakota Association of Counties to procure two-way radios; and Burleigh County may obtain the equipment directly through the supplier.<sup>1</sup>

**ANALYSIS**

Section 11-11-26, N.D.C.C., states:

Except as provided in chapters 48-01.1 and 48-02,<sup>[2]</sup> when the amount to be paid during the current year for the erection of county buildings or for election ballots and supplies exceeds ten thousand dollars, the board of county commissioners shall cause an advertisement for bids to be published at least once each week for two successive weeks in the official

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<sup>1</sup> The advice given within this opinion may not apply if the funds used to buy the goods come from a grant. Oftentimes the terms of the grant require that the recipient participate in a formal bidding process.

<sup>2</sup> This chapter involves construction for public improvements. N.D.C.C. ch. 48-02.

newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least fifteen days before the day set for the opening of the bids. For the purchase of fuel when the amount exceeds four thousand dollars, the board of county commissioners shall seek bids either by telephone solicitation from at least two suppliers, or by an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in other newspapers as the board deems advisable.

Sections 11-11-27 and 11-11-28, N.D.C.C., contain additional requirements regarding the bidding process required by N.D.C.C. § 11-11-26.

This office previously stated:

N.D.C.C. §11-11-26 requires competitive bidding for the “erection of county buildings, for the purchase of fuel, or for election ballots and supplies” which exceed \$2,500<sup>[3]</sup> for the year. It is my interpretation of N.D.C.C. §11-11-26 [sic] that “election” modifies supplies and, therefore, office equipment (and even office supplies) would not be subject to the competitive bidding requirements.

N.D.A.G. Letter to McIntee (Dec. 23, 1986). Thus, since the two-way radios are not covered by the purchasing requirements of N.D.C.C. §§ 11-11-26 through 11-11-28, nor by any other state law bidding requirements, Burleigh County may purchase these radios without going through a formal bidding process.

You also asked about purchasing through a joint powers agreement. Section 54-44.4-02, N.D.C.C., provides, in part:

The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific commodities or services designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

Thus, the county may join with any other political subdivision of the state in an organized purchasing group pursuant to a joint powers agreement under N.D.C.C. ch. 54-40.3 to cooperatively purchase the radios provided the Office of Management and

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<sup>3</sup> In 1991, the Legislature increased this amount to ten thousand dollars. See 1991 N.D. Sess. Laws ch. 107, § 1.

Budget (OMB) agrees and finds that the cooperative agreement benefits both the state and the political subdivision.

You also ask whether the county may purchase the radios directly from the supplier or whether the purchase must be made through the North Dakota Association of Counties. Involvement of the North Dakota Association of Counties is not required for two political subdivisions to enter into an organized purchasing group pursuant to a joint powers agreement. Section 54-40.3-01(1)(c), N.D.C.C., states that a joint powers agreement may state the "precise organization, composition, and nature of any separate administrative or legal entity, including an administrator or a joint board, committee, or joint service council or network, responsible for administering the cooperative or joint undertaking." N.D.C.C. § 54-40.3-01(1)(c). Thus, while the North Dakota Association of Counties could certainly act as an administrative organization under this chapter, the joint powers agreement could provide for another administrator of the parties' choosing.

In this case, OMB has negotiated a two-way radio price agreement that includes the following provision: "This contract will be made available to all North Dakota . . . political subdivisions." Thus, Burleigh County may, even without entering into a joint powers agreement, obtain the radios directly through the supplier provided the agreement OMB negotiated is still in effect.

Sincerely,

Wayne Stenehjem  
Attorney General

njl/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).