

OPINION
65-225

May 17, 1965 (OPINION)

Mr. J. B. Graham

State's Attorney

Dickey County

RE: Printing - Bids - Preference

In a letter of this office dated May 4, 1965, you asked the following questions:

1. Does section 44-08-01 mean that Dickey County must award its bid for printing supplies to a North Dakota publishing house if the bid of the North Dakota publishing house does not exceed by more than ten percent the sum of the bid submitted by a nonresident, or out of state publishing house? (Sic) (Section 46-02-15).
2. Or can we go by section 44-08-01, which states that a North Dakota resident bidder is allowed only a two percent preference over an out of state bidder?"

The two sections of the North Dakota Century Code under consideration provide as follows:

"46-02-15. PUBLIC PRINTING TO BE DONE IN STATE - EXCEPTION. - All state, county, and other public printing, binding, and blank book manufacturing, blanks, and other printed stationery, shall be done only by established and qualified printing and publishing houses that shall have been established and in continuous business in this state not less than one year, except as otherwise provided in this section. Where practicable, such contracts shall be awarded to establish institutions in the county for which such printing is required if the rates charged for such printing, binding, blanks, and other supplies shall not exceed by more than ten percent the sum that the same class and quality of work can be secured for from publishing houses outside the state. In case any board or official empowered to secure public printing and binding, as provided herein, shall ascertain that there exists any combination, agreement, or understanding by and between two or more publishers or publishing houses in this state, directly or indirectly, fixing the prices to be charged for the printing mentioned in this section, this section shall not apply and such officer or board may secure public printing from publishing houses outside the state."

"44-08-01. PREFERENCE TO NORTH DAKOTA BIDDERS AND SELLERS. - The department of accounts and purchases, or any board, commission, city council, board of city commissioners, board of

education, board of park commissioners, school board, board of village trustees, or any other governing body of any political subdivision of the state, or of any state institution, in purchasing any goods, merchandise, supplies, or equipment of any kind, shall give preference to bidders or sellers resident in North Dakota. In specifying or purchasing goods, merchandise, supplies, or equipment to be purchased, such board shall not specify any trade-marked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, where the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. Utility, fitness, and quality being equal, the bid or offer of a resident North Dakota bidder or seller shall be accepted, when such bid or offer is not more than two percent higher than that of a low bidder or seller who is not a resident of this state."

The answers to your questions depend, in the first instance, upon the nature of the supplies the Board is contemplating purchasing. If the supplies are in the nature of "* * *", then section 46-02-15 would apply. If the purchase is of a more general nature, then section 44-08-01 would apply, unless, of course, the particular purchase is governed by some other specific statute. For our discussion herein, we are assuming that the purchase is one such as is contemplated by section 46-02-15 and, since section 46-02-15 is a special statute, it would govern over the more general section 44-08-01 of the North Dakota Century Code.

While section 46-02-15 of the North Dakota Century Code is not entirely free of ambiguity, it is our view that the intent of the Legislature was to give to qualified printing and publishing houses that have been established and in continuous business in this state for not less than one year, a ten percent preference over publishing houses outside the state. As between publishing houses within the state, section 46-02-15 gives, where practicable, a preference to the publishing houses within the county for which the printing is required.

In summary, it is our opinion that section 46-02-15 of the North Dakota Century Code provides that, in the awarding of public printing contracts, a ten percent preference be given publishing houses located within the state over publishing houses located outside the state.

HELGI JOHANNESON

Attorney General