

**OPINION**  
**66-163**

August 1, 1966 (OPINION)

Mr. Vincent A. LaQua

State's Attorney

Wells County

RE: Public Contracts - Advertisement for Bids

This in response to your letter in which you state the following:

"The heating system in the basement of the Wells County Courthouse which is used to heat the Sheriff's Office, hall, jail and sheriff's residence was not working in a satisfactory manner.

"The Board of County Commissioners discussed the matter of installing a separate and new heating unit with thermostats, radiators and baseboard heating with a plumber from Maddock, North Dakota. The job was also to include disconnecting and removing of ceiling pipes and radiators that were used in the basement and the wrapping of exposed pipes that would lead to upper part of the courthouse.

"There are considerable amounts of vaults and concrete walls to go through and it appears that it will be a difficult job.

"The Board of County Commissioners did not advertise for bids for the above mentioned material, work and labor. The agreement with the plumber was that the county would pay 10 percent over invoice of all materials used and 20 percent over on actual labor performed and stated that the job should run approximately \$3,800 and completed by fall.

"The furnace, radiators, baseboard heating, pipes are presently in the basement of Wells County Courthouse. The plumber and his crew have been removing some of piping and radiators from odd heating system for the past two days when one of the County Commissioners called the County Auditor and directed him to inform the submitted bids.

"The problem we face is this, that if we advertise for bids, the earliest they can be opened in 30 days after the first publication, thus running into late fall before work can be commenced and cold weather would be setting in."

You then ask the following questions:

1. Do the County Board of Commissioners have to advertise for bids for heating plan and equipment that would cost over \$1,000 and pursuant to section 11-11-26 of N.D.C.C."
2. If they have to advertise for bids, can they have the

plumber that commenced the heating job assist the Board of County Commissioners is setting forth the plans and specifications in the advertisement for bids?"

One of the pertinent sections which would be applicable to your set of facts is section 11-11-26 of the North Dakota Century Code, which provides as follows:

"WHEN BOARD SHALL ADVERTISE FOR BIDS. When the amount to be paid during the current year for the erection of county buildings, for the purchase of fuel, or for election ballots and supplies, exceeds one 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 newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least thirty days prior to the day set for the opening of the bids."

This section has been construed by the North Dakota Supreme Court indicating that repairs and improvements on buildings come within the provisions of said section. The court has also held that failure to advertise for bids is grounds for vitiating the entire contract and transaction. (See *Beyne v. Thorson*, 37 N.D. 187, 163 N.W. 822; *Chaffee v. Crowley*, 49 N.D. 111, 190 N.W. 308; and *Northwestern Sheet and Iron Works v. Sioux County*, 76 N.D. 457, 36 N.W. 2d. 605.)

In direct response to your first question, it is therefore our opinion that the Board of County Commissioners must advertise for bids for heating plant and equipment where the cost exceeds \$1,000. We must also call your attention to the provisions of section 11-11-27 as to what must be contained in the advertisement, particularly as to plans and specifications.

As to your second question, the amount being under \$12,000, the provisions of section 48-02-02 of the North Dakota Century Code would not apply which would require that the plans, drawings and specifications be procured from a licensed architect. This would leave the matter in the sound discretion of the Board of County Commissioners in procuring plans and specifications from any person who is capable of providing same. We should note, however, that care should be taken by the Board of County Commissioners to employ the services of a person who would not have a direct interest in the project. What the law attempts to prevent is collusion or interference with competitive bidding.

While the plumber who has been, to some degree, engaged for services may have an interest and subsequently may submit a bid, he is not on this basis along disqualified from preparing the plans and specifications for the Board of County Commissioners. Whether it is advisable under the circumstances to do so is a matter on which the county commissioners should exercise sound discretion.

Thus in direct response to your second question, it is our opinion that the Board of County Commissioners may employ the services of any competent person to prepare the plans and specifications needed in the advertisements for bids.

In closing we might observe that the emergency, if any, in this instance is a self made proposition and such would not qualify as an emergency under the normal contemplated provisions of law related to emergencies.

HELGI JOHANNESON

Attorney General