

**OPINION
46-230**

June 24, 1946 (OPINION)

PUBLIC CONTRACTS

RE: Bids - Emergencies

I am in receipt of your letter of June 22, 1946, in which you say that on June 15, 1945, the state water conservation commission authorized the secretary of the commission to purchase a caterpillar tractor from the Dakota Tractor and Equipment company at a price of \$2,925.00; that a voucher was submitted and the warrant covering same has been issued; and that you are holding the warrant until delivery of the tractor.

You say that, "owing to the conditions at that time delivery was not made. This was caused by the company furnishing all their available equipment for the use of the war. However, since the close of the war, to make delivery. Recently they advised us that they have the equipment in Fargo and will be in a position to make delivery before the end of the month. Since the original contract was made, the price of the equipment has increased and they have informed us that there will be an additional charge of approximately \$3,300.00."

You say further: "In our original request for this equipment we were informed we could take informal bids on any purchase under \$3,000.00. However, it is our understanding that if it exceeds \$3,000.00 we are required to go through the formal process of advertising and obtaining bids in that manner.---"

Insofar as I have been able to determine, there is no statutory provision prescribing a uniform method for purchasing equipment, such as automobiles, tractors, etc., by the various state offices and departments. ordinary office supplies and office equipment are, of course, required to be ordered and purchased through the state purchasing agent in the office of the board of administration. But the purchase of equipment, such as motor vehicles, tractors, etc., is probably beyond the scope of his duties. Therefore, when the purchase of equipment, such as motor vehicles, tractors, etc., is contemplated by any department, this office has advised that if the procedure prescribed by law for the purchase of equipment by the state highway department is followed, no one can complain that such sale was not fairly and legally made.

It is evident that the commission authorized you to purchase the caterpillar tractor mentioned in your letter after you had followed the procedure prescribed by section 24-0220 of the 1943 Revised Code relating to the purchase of equipment by the state highway department. It is a matter of common knowledge that the OPA has fixed a so-called ceiling price for all such equipment. The fact that the price of the tractor which the Dakota Tractor and Equipment Company agreed to furnish for \$2,925.00 has advanced to \$3,000.00 is undoubtedly due to a raise in the OPA ceiling price. Similar equipment manufactured by other concerns has undoubtedly increased in price in the same proportion.

It is also common knowledge that competitive bidding by manufacturers of and dealers in such equipment is nonexistent. Dealers cannot supply the demand. There is no competition for a market. And this condition will undoubtedly obtain for a considerable time. Advertising for bids in conformity with the provisions of section 24-0220 of the Revised Code would, therefore, mean added expense, further delay, and even the possibility that a tractor of the type required by the commission cannot be secured this year.

In view of this situation, it is my opinion that the common-sense rule is applicable and that the commission may purchase the tractor at the advanced price without advertising for bids. A statement should, however, be furnished by the Dakota Tractor and Equipment Company explaining the reason for the increase in price. Such statement should be attached to the original bid filed with the commission.

NELS G. JOHNSON

Attorney General