

OPINION
46-33

February 16, 1946 (OPINION)

COUNTY COMMISSIONERS

RE: When May Declare Emergency

This will acknowledge your letter of February 9. I note from your letter that the question has been discussed by you, Mr. Stormon, Mr. Teigen, and Mr. L. L. Butterwick, whether the county commissioners of a county may declare an emergency and purchase road machinery and other supplies without advertising for bids, as provided by law.

The county commissioners must be governed by the statutes with reference to advertising for bids for road machinery, as well as supplies needed by the county during any one year in excess of the value of \$300. Section 24-0504 of the 1943 revised code deals with the requirement to advertise for the purchase of county road machinery. You will note that all purchases of county road machinery, and all rental contracts or agreements for the use of road machinery and other articles or contracts for the improvement of the highways, except necessary repairs for such road machinery, which shall exceed the sum of \$200, shall be advertised in the manner provided by law for the purchase of county supplies. As far as I can ascertain, there is no exception to this statute. Section 24-0803 permits the county commissioners in case of an emergency requiring the immediate rebuilding or repairing of any bridge, to declare an emergency and provide for the rebuilding or repairing of the same without advertising for bids. No such exception appears in the statute dealing with the requirement to advertise for bids for the purchase or rental of road machinery.

It is, therefore, the opinion of this office that the county commissioners do not have any right to declare an emergency, and thus avoid advertising for bids, for the purchase or rental of county road machinery. The statute requires them to advertise for the purchase of such machinery, if the same amounts to more than \$200 and, since there is no exception to this statute, the declaration of an emergency to avoid the requirement of advertising for bids is an evasion of the statute. The county commissioners do not have the power or authority to declare such an emergency. They must abide by the specific requirements of the statute, so as to procure the best prices available for the county.

You are no doubt aware of chapter 147 of the 1945 Session Laws, authorizing certain contracts with the Federal Government. The foregoing opinion, of course, has no application under that statute.

NELS G. JOHNSON

Attorney General