

## Opinion No. 44-4523

May 26, 1944

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. S. L. Kirk, Chairman, Contractors' Licensing Board, Santa Fe, New Mexico

We are in receipt of your letter of May 24, 1944, concerning the procedure for letting of bids by states, counties and municipalities. We are not just certain as to what information you want; however, it appears from your letter that you desire an opinion on the following three questions:

1. Must bids be accepted and contract let on the day and hour set forth in the advertisement?
2. How great an amount must be involved before an advertisement for bids is necessary?
3. Can any of the above mentioned state agencies accept a bid tendered after the time provided in the advertisement?

Chapter 233 of the Laws of 1939, as amended by Chapter 98 of the Laws of 1943, covers the general subject of the letting of contracts. By Section 1, which is compiled as Section 6-401 of the 1941 Compilation, the act is made to include all county and state officials, heads of departments of state, and any political or municipal subdivisions of the state, as well as state institutions.

Section 4, being compiled as Section 6-404, provides in part, as follows:

"Purchases, or contracts for the construction, repair or improvement of buildings or for materials or labor to be furnished or performed which involve the expenditure at any one time of more than \$ 500 shall only be made or entered into after notice, that bids will be received at a time and place designated in the notice, has been published for at least once each week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the purchaser is located."

This section also provides that the bid of the lowest bidder shall be accepted if specifications are met, and that any purchase or sale made in violation of the section shall be void.

In answer to your first question your attention is called to the fact that nothing in this act requires that contracts be let at the time the bids are submitted or opened. The author, in 44 C. J. 109, states:

"It is not necessary that the decision awarding the contract should be made on the day when, under the statute and notice, the bids are to be opened where the statute merely provides for the making of the decision without limiting the time."

It is therefore my opinion that a contract need not be let at the time the bids are opened and read.

In answer to your second question, you will note from the above quoted provision that bids must be advertised for if purchases or contracts for construction, et cetera, involve more than \$ 500.00.

In answer to your third question, you will note that the above quoted provision provides, in part, that the notice to be published must provide "that bids will be received at a time and place designated in the notice." By necessary implication this section prohibits the acceptance of a bid tendered at any other time. Thus, since a contract let on a bid accepted at any other time would be in violation of this section the contract would be void. This construction is consistent with the purpose of such statutes, which is to prevent favoritism, corruption, extravagance and improvidence. 44 C. J. 99.

It is, therefore, my opinion that the answer to your third question should be in the negative.

Trusting the foregoing sufficiently answers your inquiry, I remain

By ROBERT W. WARD,

Asst. Atty. General