



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 20, 1976

ATTORNEY GENERAL OPINION NO. 76- 21

Mr. Steven L. Opat
Dickinson County Attorney
Sunflower Building
Abilene, Kansas 67410

Re: Counties--Contracts--Bidding

Synopsis: Contracts for the improvement of an existing county jail to comply with standards promulgated by the Secretary of Corrections are not contracts for the erection of a county jail, and are not subject to the requirements of K.S.A. 19-214 and -215.

* * *

Dear Mr. Opat:

You advise that since the adoption of new jail standards by the Secretary of Corrections, questions have arisen concerning the procedure for contracting for jail improvements. In Dickinson County, you advise, the board of county commissioners have proposed to enter into a contract for the renovation and remodeling of the jail without letting bids therefor.

K.S.A. 19-214 states in pertinent part thus:

"All contracts for the *erection* of any courthouse, jail, or other county building, or the construction of any bridge, the cost of which exceeds two thousand dollars (\$2,000), shall be awarded, on a public letting, to the lowest responsible bidder. . . ."
[Emphasis supplied.]

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K.S.A. 19-215 specifies the procedure to be followed:

"The board of county commissioners shall, before awarding any contract for *any such improvement*, public notice of the letting in some newspaper printed in the county, or, if there be no such newspaper in the county, said board shall cause written or printed notices to be posted in at least five conspicuous places in the county for the same length of time, which notice shall specify with reasonable minuteness the character of the improvement contemplated, the time and place at which the contract will be awarded, and invite sealed proposals for the same. . . ." [Emphasis supplied.]

You inquire whether under these provisions, the same procedure is required, including the publication of notice for the letting of contracts by sealed bids, for the remodelling and renovation of an existing jail structure, in order to comply with the standards adopted by the Secretary of Corrections, rather than for the "erection" of a jail or other county building as specified in K.S.A. 19-214.

In an opinion written September 6, 1960, to H. E. Crosswhite, Jackson County Attorney, Attorney General William F. Ferguson wrote thus:

"[Y]ou state that your county commissioners propose to renovate your jail by installing new cell blocks in your present courthouse at a cost of approximately \$20,000. You ask whether the commissioners are required to take bids on the proposed work.

As you have noted, G.S. 1949, 19-214 requires a public letting of 'all contracts for the erection of any courthouse, jail, or other county building, or the construction of any bridge, the cost of which exceeds \$1,000.' In my opinion the term 'erection' used in said statute is broad enough to cover substantial capital improvements such as that contemplated by your commissioners. The section implies a manifest legislative intent that a county should not expend large sums of public money for permanent structures without a public letting of the contract."

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General Ferguson cited no reported decisions bearing on the question. In *School District No. 6 v. Robb*, 150 Kan. 402, 93 P.2d 905 (1939), the question was presented whether a statute authorizing the issuance of bonds for "erecting and equipping" a school building authorized the issuance of bonds in the amount of \$16,000 to replace a heating plant, electrical equipment and a roof of an existing school building. The court observed thus:

"It may be observed that under the statute authorizing the issuance of bonds either for the erection or purchase, . . . of the school building, the unit referred to is the building, and not its component parts. In terms the statute does not authorize the issuance of bonds to repair or replace any part of any existing school building. Essentially the question may be said to be whether the school district is erecting and equipping a school building or merely repairing a school building now in existence. In that connection, it must not be overlooked that were the proposed work now completed, the school district would have a building in no sense different from the present building, save that it would have a new roof and assumedly a more adequate heating and electrical system; it would have no more room, and structurally it would not be changed."

After a review of other jurisdictions, the court stated thus:

"It appears that courts of other jurisdictions have seen fit to draw a distinction between the erection of public improvements and the maintenance or repair of them, insofar as use of moneys from bond issues is concerned.

* * *

The record here makes it clear that what it is proposed to do here is to put the school building in good condition by replacing or renewing parts of it; in other words, by repairing or replacing worn-out or inadequate parts. We think that had it been intended by the legislature

that a school district be authorized to issue bonds for such purposes, it would have used language clearly indicating that purpose.

* * *

We conclude that under the statutes authorizing school districts to issue bonds for the purpose of erecting and equipping or purchasing and equipping a schoolhouse in the district, the district has no power to issue bonds the proceeds of which are to be used for repairing a presently existing building, and that the work contemplated in the present proceedings is repair work."

In *Escambia County v. Blount Constr. Co.*, 62 So. 650 (Fla. 1913), the court stated thus:

"It is forcefully contended that under this act bids for making the additions and alterations should have been advertised for upon the theory that the policy of the statute, if not its terms, requires it in the interest of the taxpayers. But the terms of the statute cannot by construction be extended beyond the fair import of the language used, considered in view of the object sought to be attained. The words used in requiring advertisements for bids for 'erecting or building of any house' are restrictive, and do not fairly extend to contracts for alterations and additions made in the plans and specifications of a contract duly made in good faith for the erection or building of any house"

It is possible, of course, that the renovation and remodelling of an existing structure may be so extensive and pervasive that the result is a new building. In *Tom v. Board of County Com'rs of Lincoln County*, 43 N.M. 292, 92 P.2d 167 (1939), the court held that the remodelling of an old public building into what is in effect a new one is the "erection of a public building" within the meaning of a constitutional provision that no county shall borrow money except for erecting necessary public buildings. The court stated thus:

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"We do not mean to hold that old public buildings cannot be remodeled with funds obtained from such bond issues, if the effect is to erect a new building. Indeed it has been held, and we hold, that the remodeling of an old public building into what is in effect a new one, is the erection of a public building within constitutional provision and statute." [Citations omitted.]

In *Board of Com'rs of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515 (1939), the court observed thus:

"In the common understanding of the people, when we speak of the building of a house we mean the erection or construction of a new house and not the repair or remodeling of an old one. See Landis' Appeal, 10 Pa. 379. And yet it may be conceded that a building may be so greatly changed in structure, in the materials which enter into it, and in its internal arrangements, without at all losing its identity or ceasing to be the same building, and nevertheless be so entirely changed in plan, in structure, in dimensions, and in general appearance as to become, in a fair sense, and according to the common understanding of men, another building, a new building. On the other hand, it is everyday experience that buildings are remodeled more or less extensively and upon a contemplation of the changes, re-formation, reshaping or recasting there would not be, according to the common understanding of men, the creation of another building, a new building."

The court goes on to cite a number of cases from various jurisdictions in which courts have distinguished between the erection of a building and repair or improvements to an existing building.

The distinction is well-established and widely recognized, and cannot be ignored in the construction of this statute. By its express terms, it applies to the "erection" of a courthouse, jail, other county building or bridge, and not to the repair or improvement thereof. I cannot concur in the opinion of General Ferguson on this question.

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You further inquire whether the term "any such improvement" in K.S.A. 19-215 refers to the term "erection" in K.S.A. 19-214 or whether it includes, in addition thereto, remodeling or renovation. K.S.A. 19-214 and -215 were enacted in 1868, as sections 21 and 22 of a single enactment. The two sections must be construed together. Indeed, it is necessary to do so to provide a referent for the adjective "any such" preceding "improvement" in K.S.A. 19-215. "Any such" improvements within the scope of K.S.A. 19-215 are, in my opinion, only those improvements which are described by and fall within K.S.A. 19-214, *i.e.*, those erections of county courthouses, jails, and other county buildings and bridges. Thus, it is my opinion that a contract for the remodeling of the jail may be let otherwise than pursuant to K.S.A. 19-215, because this improvement is not an improvement within the meaning of that statute, which improvements are restricted to the erection of buildings and the like referred to in K.S.A. 19-214.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Elmore Jones
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