

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 77

B. Steven Upshaw
Grant County Attorney
314 N. Glenn
Ulysses, Kansas 67880

Re: Counties and County Officers -- County
Commissioners -- Awarding of Certain Contracts;
Public Lettings; Bond; Exemptions

Synopsis: K.S.A. 19-214 does not require public bid-letting
for the construction of a swimming pool. Cited
herein: K.S.A. 19-214.

* * *

Dear Mr. Upshaw:

As Grant county attorney, you request our opinion as to whether the competitive bid requirement set forth in K.S.A. 19-214 is applicable to the construction of a swimming pool. You have informed this office that the question pertains only to the swimming pool and not the building which will adjoin the pool.

K.S.A. 19-214 states:

"(a) Except as provided in subsection
(b), all contracts for the expenditure of
county moneys for the construction of any
courthouse, jail or other county building,
or the construction of any bridge in
excess of \$10,000, shall be awarded, on a
public letting, to the lowest and best

bid. The person, firm or corporation to whom the contract may be awarded shall give and file with the board of county commissioners a good and sufficient surety bond by a surety company authorized to do business in the state of Kansas, to be approved by the county attorney or county counselor, in the amount of the contract, and conditioned for the faithful performance of the contract.

"(b) The provisions of subsection (a) shall not apply: (1) To the expenditure of county funds for professional services; (2) to the provisions of K.S.A. 68-521; or (3) to the purchase of contracts of insurance."

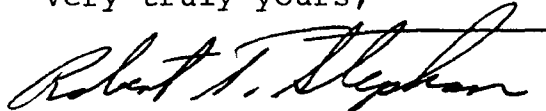
This statute applies to the construction of courthouses, jails, bridges and county buildings but does not mention any term that would encompass swimming pools. In the absence of any other statutory requirement, the county is not mandated to seek competitive bids for the construction of the swimming pool. McQuillan, Municipal Corporations, § 29.31 (1990); see also Attorney General Opinion No. 88-45.

However, it should be noted that "the State of Kansas strongly favors competitive bidding." See Attorney General Opinion No. 88-45. The rationale for governmental entities awarding contracts by competitive bids is as follows:

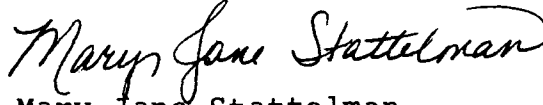
"The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest." McQuillan, Municipal Corporations, § 29.29 (1990); see also Attorney General Opinion No. 91-55.

In conclusion, although K.S.A. 19-214 does not mandate that the job of constructing the swimming pool be awarded on a competitive bid basis, for policy reasons (i.e. avoiding the appearance of impropriety or favoritism; obtaining bonded assurances from contractors; or encourage financial competitiveness) the county may want to award the contract by public bid-letting.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General

RTS:JLM:MJS:bas