



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 11, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 81-65

Mr. Wendell J. Barker
Franklin County Attorney
Court Building
Ottawa, Kansas 66067

Re: Counties and County Officers--County Commissioners--
Notice of Letting of Contracts; Bids

Synopsis: Pursuant to the provisions of K.S.A. 19-215 and 19-216, notice must be published, and plans and specifications must be filed (with the county clerk), at least thirty days prior to the date set for letting of a contract which is subject to the competitive bidding requirements of K.S.A. 1980 Supp. 19-214 et seq. The plans and specifications must be sufficiently definite and explicit as to enable bidders to prepare their bids intelligently on a common basis. Cited herein: K.S.A. 1980 Supp. 19-214, K.S.A. 19-215, 19-216.

*

*

*

Dear Mr. Barker:

You request our opinion as to the legality of the procedure followed in awarding a contract for interior remodeling of the Franklin County Courthouse. You state that Franklin County has a population of approximately 22,000, and that the contract awarded was in excess of \$10,000. You further state that the contract was awarded on January 12, 1981, after published notice was given in the Ottawa Herald (on December 29, 1980, and January 10, 1981) inviting sealed proposals, and you have enclosed a copy of the notice which was published. Also, you state as follows with regard to filing of plans and specifications for the proposed work in the office of the county clerk:

Mr. Wendell J. Barker
Page Two
March 11, 1981

"I was informed that the plans for all of the proposed improvements to the courthouse were on file in the Franklin County Clerk's Office more than thirty days before January 12, 1981. However, I was also informed that the drawings and specifications referred to in the advertisement were not on file in the County Clerk's Office until January 5, 1981. The architects advised me that the drawings and specifications referred to in the advertisement were the working drawings. The architect further advised me that the earlier plans which had been filed with the county clerk were sufficiently detailed to enable any contractor to make an intelligent bid on the project."

The applicable procedure for the award of the subject contract is prescribed by K.S.A. 1980 Supp. 19-214 et seq. The contract must be awarded "on a public letting, to the lowest responsible bidder" (K.S.A. 1980 Supp. 19-214), and K.S.A. 19-215 requires that notice be published "in some newspaper printed in the county" (if there is a newspaper printed in the county), 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." K.S.A. 19-216 relates to filing of plans and specifications, and provides as follows:

"Before advertising for bids for any contract as provided in the preceding section, said board shall cause plans and specifications of the proposed work or improvement to be prepared, which plans and specifications shall be displayed for the inspection of bidders, at the office of the county clerk at least thirty days before the time for awarding the contract." (Emphasis added.)

As the underscored portion of the above-quoted statute indicates, the plans and specifications must be filed with the county clerk at least thirty days before the date upon which the contract is awarded. Although no deadline, relating to publication of notice of the contract letting, is specifically set forth in K.S.A. 19-215, this office has previously held (letter opinion dated March 1, 1960) that the first publication should be at least thirty days prior to the date set for letting, for the reason that, otherwise, the statutory requirement that the plans and specifications be open to inspection for thirty days would not have any meaning. Since

Mr. Wendell J. Barker
Page Three
March 11, 1981

the facts relating to the subject contract, as set forth above, indicate that the first publication did not occur at least thirty days prior to the date set for letting, it is our opinion that the contract was not awarded in accordance with the applicable procedure prescribed by K.S.A. 19-214 et seq.

Although what has been said above is dispositive of the question which has been raised, another issue presented in your letter relates to the sufficiency of plans and specifications which are required to be filed under K.S.A. 19-216. In Bridge & Iron Works Company v. Labette County, 98 Kan. 292, 301 (1916), the provisions of a statute applicable to the award of contracts for the construction of bridges was construed as follows:

"The intent of the requirement that a plan and specifications shall be on file for the inspection of bidders is that all bidders shall be placed on an equality, and that each shall know exactly what is required. . . . [T]he plans and specifications on file for the inspection of bidders must, so far as the nature and character of the proposed work will admit, be sufficiently definite and explicit as to enable bidders to prepare their bids intelligently on a common basis. It may be said as a general rule that plans and specifications are sufficient if contractors and others skilled in such matters are able to determine what is required." (Emphasis added.)

In the same case, the court also stated that:

"None of the cases cited goes so far as to hold that statutes similar to ours can only be complied with by filing detailed working plans for the inspection of bidders The authorities are practically unanimous in holding that there can be no active, intelligent competition among bidders unless plans and specifications are open to inspection which are sufficiently explicit as to afford to all bidders an equal opportunity to bid upon the same project or proposition." Id. at 304.

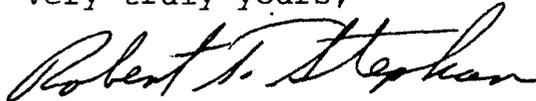
In the situation you describe, relating to the award of a contract for interior improvements to the Franklin County Courthouse, the facts (as recited in your letter) seem to indicate that the requirements of K.S.A. 19-216 have been satisfied. If the plans and specifications filed with the county clerk thirty days prior

Mr. Wendell J. Barker
Page Four
March 11, 1981

to January 12, 1981 (the date on which the contract was awarded), were "sufficiently detailed to enable any contractor to make an intelligent bid on the project," then the principles enunciated in the Labette case, supra, indicate that the county probably has complied with the provisions of K.S.A. 19-216. However, since an opinion relative to the sufficiency of the plans and specifications requires the application of the above-recited legal principles to factual issues (i.e., the adequacy of the plans and specifications which were filed), and since said factual issues, if disputed, may only be decided upon trial before a court, we shall not render a definitive opinion regarding whether the requirements of K.S.A. 19-216 have been satisfied.

In summary, it is our opinion that the subject contract was not awarded in accordance with the applicable procedure prescribed by K.S.A. 1980 Supp. 19-214 et seq., for the reason that the first notice of letting was not published at least thirty days prior to the date set for letting. Also, the plans and specifications filed with the county clerk, more than thirty days prior to January 12, 1981, would be considered adequate to satisfy the requirements of K.S.A. 19-216 if they were sufficiently definite and explicit as to enable bidders to prepare their bids intelligently on a common basis.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm