



STATE OF KANSAS

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ATTORNEY GENERAL OPINION 82-10

Mr. A. C. Cooke
Cooke, Ballweg, Borth,
Wilson & Simpson
P. O. Box 8228
Prairie Village, Kansas 66208

Re: Counties and County Officers -- Parks, Museums,
Lakes and Recreational Grounds -- Competitive Bid
Procedures

Synopsis: Competitive bid statutes are to be strictly construed regarding procedures to be followed. Therefore, a park board, having only those powers expressly granted by statute or necessarily implied therefrom, may not adopt a procedure for submission and tabulation of bids which deviates from the competitive bid procedure prescribed for the board by statute. Cited herein: K.S.A. 19-2881.

* * *

Dear Mr. Cooke:

As attorney for the Johnson County Park and Recreation District, you ask whether the scope of the competitive bid procedure set forth in K.S.A. 19-2881 would permit the Park Board to change the manner in which it receives bids. You state that the Board currently receives sealed bids at its monthly meeting where they are opened, tabulated and an award made. The Board would like to change the procedure to permit the District's staff to receive, open, and tabulate the bids prior to the meeting and then submit the bid tabulation at the meeting for the Board's consideration.

K.S.A. 19-2881, the statute in question, states in pertinent part:

"The purchase of materials, contracts for purchase or sale, lease contracts and other contractual services which are estimated to exceed one thousand five hundred dollars (\$1,500), shall be made upon competitive bids. All bids shall be made in writing and signed by the bidder, and presented by the bidder, his agent or attorney, to the board, at a meeting thereof, and all bids shall be considered and accepted or rejected immediately after their submission." (Emphasis added.)

Competitive bidding statutes are to be strictly construed to protect the public against waste of public funds. 72 C.J.S. Supp. Public Contracts, §9 (1975). In addition "[a]ll . . . statutory provisions . . . as to time, place, and method of procedure should be strictly followed, since such provisions are usually held to be mandatory" McQuillin Municipal Corporations, §29.70 (1981). A strict reading of 19-2881 requires us to conclude that only the bidder, his agent or attorney may submit the bid to the Board and such submission must take place at a meeting of the Board. Requiring that the bids be first submitted to the staff, then permitting a staff member, rather than the bidder or his agent, to present the bids to the Board, would conflict with the strict requirements of the statute, and would, therefore, not be permissible.

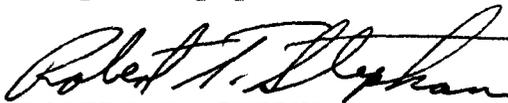
We note further that the district is a quasi-municipal corporation. As such, the district has only those powers which are expressly authorized by statute or clearly implied therefrom. State v. Kansas City, 60 Kan. 518 (1899); Kaw Valley Drainage District v. Kansas City, 119 Kan. 368 (1925). The board is given no power to alter the procedure set forth in the statute, and in our judgment no power may be clearly implied therefrom. From our review of the case law regarding implied powers of governmental bodies, it is clear that the only time powers will be implied is when they are necessary to actually accomplish the purpose behind a specific statute, i.e., the courts' determination of implied powers has been limited to situations where, without them, the governmental agency would have no way to carry out its express statutory powers. See, e.g., Edwards County Commissioners v. Simmons, 159 Kan. 41 (1944); Womer v. Aldridge, 155 Kan. 446 (1942); The State, ex rel., v. Wooster, 111 Kan. 830 (1922); State, ex rel., v. Davis, 114 Kan. 270 (1923); The State, ex rel., v. Younkin, 108 Kan. 634 (1921); Young v. Regents of State University, 87 Kan. 239 (1912); and Brown County v. Barnett, 14 Kan. 627 (1875).

With these principles in mind, we have considered the present statutory procedure for receiving bids, and it is apparent that the change proposed in this procedure by the Johnson

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County Park and Recreation Board is not necessary to accomplish the express powers granted the Board by K.S.A. 19-2881. In fact, it is clear that the Board has been able to carry out these powers in the absence of the proposed change. Therefore, it is our opinion, the Board may not adopt the new procedure.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle