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April 3, 1992

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ATTORNEY GENERAL OPINION NO. 92- 45

Wilson E. Speer  
General Counsel for Water District  
No. 1 of Johnson County  
201 N. Cherry Street  
P.O. Box 1000  
Olathe, Kansas 66061

Re: Counties and County Officers--Water Supply and  
Distribution Districts--Rules and Regulations  
Relating to Use of Water; Cost of Extensions

Synopsis: For contracts under \$25,000, a water district has  
the discretion to promulgate regulations that allow  
an applicant for a water main extension to  
negotiate costs directly with a contractor. K.S.A.  
19-3514 however requires that the resulting  
contract must be made by the water district board.  
A water district board cannot prequalify bidders  
for the purpose of letting out a public contract  
pursuant to K.S.A. 19-3516. Cited herein: K.S.A.  
19-214; 19-215; 19-216; 19-3514; 19-3516.

\* \* \*

Dear Mr. Speer:

As general counsel to Johnson county water district no. 1 you  
make several inquiries dealing with the interpretation and  
application of K.S.A. 19-3514 and 19-3516 as each relates to  
the construction of water main extensions.

You indicate that water district no. 1 of Johnson county is  
the only urban water utility ever created under K.S.A. 19-3501

et seq., and that it is a quasi-municipal corporation and a political subdivision of the state of Kansas that serves approximately 96,600 account customers. Currently the rules and regulations of the water district require a landowner or developer seeking the extension of a distribution main to file a line extension petition and agreement with the water district accompanied by a cash deposit or a letter of credit in the amount of the construction cost as estimated by the water district. The filed petition and agreement becomes a contractual agreement upon acceptance and execution by the water district's general manager. The district then undertakes to have the line extension constructed by an independent contractor who has been previously selected through the process of competitive bidding to construct such line extensions for a period of approximately one year.

As background information you state that for several years developers have contended that they could have the line extensions constructed by their own contractors under the same water district specifications at a lower cost than the unit prices charged by the district under its method of engaging a single contractor on an annual basis. This contention has resulted in a proposal by the Kansas City homebuilders association that involves individual developers, as applicants for water main extensions, negotiating the costs with independent contractors that have been prequalified by the district. The change contemplates the creation of a prequalified pool of engineers and contractors from which a developer could choose for purposes of a particular contract. While financial arrangements for a particular job would be negotiated between the contractor and the developer, thus allowing market forces to control costs, control regarding design and workmanship would remain with the water district.

At issue is whether the following changes are authorized by the statutes, specifically K.S.A. 19-3514 and 19-3516.

1. May the water district change the rules and regulations to allow project cost negotiation between the applicant and the contractor for contracts under \$25,000?
2. Must the negotiation result in a contract between the water district and the contractor rather than the initial negotiating parties [discussed in question no. 1]?
3. May the water district prequalify a group of bidders for construction projects under \$25,000?

4. Does the water district's current procedure of contracting all projects with one contractor in an annual contract comply with the statute?

Water districts can exercise only those powers granted them by statute, 94 C.J.S. Waters § 243(5) (1956). We must thus examine what powers and duties the statutes impose. K.S.A. 19-3514 requires the water district board to adopt public rules and regulations dealing with the construction of water main extensions. It states in part:

"Upon application for water main extensions and full compliance with the rules and regulations by the applicant, the board shall cause to be constructed such extensions which shall become the property of the water district. Upon completion of construction, the actual cost thereof shall be determined by the board and any excess in an advanced payment shall be returned to the applicant or any shortage therein collected by the board."

The statute requires the water district board to contract for the construction sought by an applicant. The board must then determine the costs and refund any excess payment or collect any shortage of payment advanced by the applicant. K.S.A. 19-3516, subsection (d), states in part:

"The water district board, by a majority vote of the members thereof, may contract for repairs, alterations, extensions or improvements of the water supply and distribution system and issue revenue bonds to pay the cost thereof without submitting to a vote of the electors of such water district the proposal to contract for the making of such repairs, alterations, extension and improvements and to issue revenue bonds to pay the costs thereof.

"All contracts for any construction of all or part of the water system, or for repairs, extensions, enlargements or improvements to any such water supply and distribution system created under this

act, the cost of which exceeds \$25,000 shall be awarded on a public letting by the water district board to the lowest responsible bidder, and in the manner provided by K.S.A. 19-214, 19-215 and 19-216, and amendments thereto. . . ."

Subsection (d) of K.S.A. 19-3516 requires contracts exceeding \$25,000 to be awarded on a public letting to the lowest responsible bidder, reiterated in K.S.A. 19-214, with the notice requirements set in K.S.A. 19-215 and after display of specific plans and specifications, K.S.A. 19-216. The notice requirement is extended if contract costs exceed \$100,000 and provisions are made for an emergency need.

Neither of these statutes precludes the water district board from changing the rules and regulations to allow cost negotiation between the applicant needing the water extension and the contractor who will build it when the contract costs are under \$25,000. When over \$25,000 negotiation such as that suggested cannot be had because K.S.A. 19-3516 requires the contract be awarded by a public letting in the manner provided by K.S.A. 19-214, 19-215 and 19-216. See Attorney General Opinion No. 81-65 discussing these competitive bidding requirement statutes.

Your second question is whether the water district board must be party to a resulting contract. K.S.A. 19-3514 requires that the "board cause to be constructed," necessarily making the water district board responsible as the contracting party who must determine the costs, refund any excess and collect any shortage of costs.

The third issue involves prequalification of bidders when the contract does not exceed \$25,000. In our opinion prequalification or prescreening of bidders for the purposes of letting a public contract is not in the best interest of the state, regardless of the contract amount in question. Prequalification is contrary to the concept of competitive bidding and inures itself to allegations of impropriety or favoritism. The issue is discussed extensively in Attorney General Opinion No. 85-168 dealing with whether a county may prescreen bidders on the construction of county or public buildings, roads and bridges. We concluded that though the statute in question did not address prescreening of bidders, its language requiring the lowest responsible bidder to be selected indicated a strong public policy against collusive contracts and favoritism. See also Attorney

General Opinion No. 88-45 dealing with whether a rural water district must seek competitive bids.

The fourth question concerns the districts' current practice of letting all projects or contracts to one contractor in an annual contract. K.S.A. 19-3516, subsection (d) mandates that all contracts, exceeding 25,000 be awarded to "the lowest responsible bidder" in the manner prescribed by K.S.A. 19-214, 19-215 and 19-216. The "lowest responsible bidder" standard is reiterated in K.S.A. 19-214, followed by procedural requirements of notice (19-215) and display of plans and specifications (19-216). Given that the procedural requirements are not in question here, the current procedure used by the water district board is authorized by the statute if the procedure meets the standard of letting all the contracts to the lowest responsible bidder. If the current procedure does not result in letting all contracts to the lowest responsible bidder because the procedure effectively eliminates other competitive bidders, then the procedure does not comply with the requirements of K.S.A. 19-3516, subsection (d). Whether the procedure meets the mandated standard is therefore a question of fact and for this reason cannot be addressed in this opinion.

The interpretation of a statute is a question of law and it is the court's function to interpret the statute to give it the intended effect. Unified School District No. 279 v. Sec'y of the Kansas Department of Human Resources, 247 Kan. 519, 524 (1990). The purpose and intent of the legislature govern when that intent can be ascertained from the statute. Id. at 527. K.S.A. 19-3514 and 19-3516's intended effect is discernible from the face of the statutes. They, in our opinion authorize the water district to promulgate rules and regulations that allow an applicant to negotiate costs directly with the contractor when the contract in question is under \$25,000. The statutes however require that the resulting contract be made by the board. Additionally, we find that prequalification of bidders for the purposes of letting a public contract is contrary to the spirit of the statutes, regardless of the amount of the contract in question.

Very truly yours,



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