

COUNTIES:
COUNTY COURT:
UTILITIES:
UTILITY POLES:

A county court must advertise for bids on a contract to remove and relocate utility poles and lines from proposed right of ways of roads in the county, when the contract exceeds \$500.00 and the poles and lines are now on private property.



September 29, 1955

Honorable Henry Balkenbush
Prosecuting Attorney
Osage County
Linn, Missouri

Dear Sir:

Your request for an opinion reads as follows:

"The County Court of Osage County has undertaken to guarantee a right away for a State supplementary road, and on the proposed right of way there are a number of utility poles to be moved the cost of which will be in excess of \$500.00. In view of section 229.050 there is some question whether the County Court is required to advertise for bids for the removal and relocation of the poles or can the court enter into an agreement with the utility that owns the poles for the cost of removing and relocating the poles, wires and etc. connected to and a necessary part of the construction of the utility line.

"The writer is of the opinion that Section 229.050 makes it mandatory on the County Court to obtain bids on this work, but has been unable to find any decisions construing this Section, hence this request for your guidance in the matter; Therefore I request an opinion from your office on this question."

You also stated in your telephone conversation with this office on the 31st of August that the county was, by agreement with the State Highway Commission, to pay for the removal and relocation of such poles and lines, and for the cost of

Honorable Henry Balkenbush

acquiring the right of way, and that the utility poles were on private property.

The question presented is whether, in contracting to relocate the poles and lines from the proposed right of way, the county must advertise for bids for said contract, or can the county without bids contract with the utility company or other persons for the removal or relocation of such poles?

As you state in your letter, it is your opinion that such contracts come within Section 229.050, RSMo 1949, and thus must be advertised for bids and let by bid. Said Section 229.050 reads as follows:

"1. Whenever it shall be ordered by the county court, township board or district commissioner, as the case may be, that any road, bridge or culvert in the county be constructed, reconstructed or improved or repaired by contract, and the engineer's estimated cost thereof exceeds the sum of five hundred dollars, the county, township or district authorities shall order the county highway engineer, or other engineer in their employ, or both such engineers acting together, if so desired, to prepare and file with the clerk of the court, township board or district commissioners, as the case may be, all necessary maps, plans, specifications and profiles, and an estimate of the cost of the work. The court or other proper authority may approve or reject the maps, plans, specifications and profiles and order others prepared and filed.

"2. When the maps, plans, specifications and profiles have been approved, the county, township or district authorities shall order the engineer to advertise the letting of the contract proposed to be let by advertisement in some newspaper published in the county wherein the contract is to be executed, which said advertisement shall be published once a week for three consecutive weeks, the last insertion to be within ten days of the day of letting.

"3. All bids shall be in writing, accompanied by instructions to bidders which shall be furnished

Honorable Henry Balkenbush

by the engineer upon application. All bids on road work shall state the unit prices upon which the same are based. All bids shall be sealed and filed with the clerk of the county court, township board or special road district commissioners, and, on the day and at the hour named in the advertisement, shall be publicly opened and read in the presence of the court, township board or special road district commissioners; and the engineer, and shall then be recorded in detail in some suitable book. All bids shall be accompanied by a certified check equal to ten per cent of the engineer's estimate of cost, payable to the county treasurer, to the use of the county, township or road district, as the case may be, or a bidder's bond executed by some surety company authorized to do business in this state or other good and sufficient surety in a like sum shall be given, as a guarantee on the part of the bidder that if his bid be accepted he will, within ten days after receipt of notice of such acceptance, enter into contract and bond to do the work advertised, and in case of default forfeit and pay sum of ten per cent of the engineer's estimate of cost.

"4. The contract shall be awarded to the lowest responsible bidder. The court may in its discretion reject any or all bids. Any bid in excess of the engineer's estimate of the cost of the work to be done shall be rejected. When it shall be decided by order of record to accept any bid, the county, township or district authorities shall order a contract to be entered into by and between the bidder and the county, township or special road district, as the case may be. The contract shall have attached to and made a part thereof the proposal sheet, instructions to bidders, the bid, maps, plans, specifications and profiles.

"5. Whenever the contract is executed and approved by order of record and endorsement thereon, it shall be filed and preserved as a permanent record. It

Honorable Henry Balkenbush

shall be incorporated in the contract that the county, township or special road district shall reserve the right to make any additions to, omissions from, changes in or substitutions for the work or materials called for by the drawings and specifications, /without notice to the surety on the bond given to secure the faithful performance of the terms of the contract. The bidder must agree that before the county or political subdivision shall be liable for any additional work or material, the county or political subdivision must first order the same, and the cost thereof must be agreed upon in writing and entered of record before such additional work shall apply in case of omissions, deductions or changes, and the unit prices shall be the basis of the values of such changes.

"6. In case of disagreement upon the cost or price of any addition, omission or change ordered or so desired, then it is expressly agreed that the decision of the state highway engineer shall be received and accepted as fixing definitely and finally the cost of such change, and when so fixed, the court, township board cost or price of any addition, omission shall enter of record such change. It shall also be provided in the contract that the contractor will furnish and promptly pay for all labor employed and materials used in the performance of such contract."

If such a contract as contemplated in your letter comes within the above cited section, then it must be let by bid. But the question remains, does such contract come within that section? The contracts stated within the above section, which must be let by bid, are those having to do with the construction, reconstruction, improvement or repair of any road, bridge, or culvert in the county. The only possible part of that section that this contract can come under is that it be an improvement or repair of a road.

In *Cohn v. City of Missoula*, 144 P. 1087, the Supreme Court of Montana held that the opening and widening of a street and the acquisition of property therefor, was an improvement of a street.

Honorable Henry Balkenbush

In Pratt v. City of Seattle, 189 P. 565, the Supreme Court of Washington held that the word "improvement" as used in a city ordinance changing a street grade meant the acquisition of property rights as would enable the city to later improve the road.

In McCormick v. Allegheny County, 106 Atl. 203, the Supreme Court of Pennsylvania held that the laying of a sidewalk along a road by the county was an improvement of the county road.

Thus, it would seem from the cases cited above that the acquisition of a right of way or the construction of a sidewalk would be an improvement to the road and following this reasoning it would seem that the removal and relocation of poles and lines of a utility company from a right of way made necessary in order to widen the road would be an "improvement" of the road and thus, any contract for such removal or relocation of the utility poles and lines would come within Section 229.050, RSMo 1949, and such contract would have to be advertised for bids and let by bid.

CONCLUSION

It is the opinion of this office that a county court must advertise for bids and let by bid a contract to remove and relocate utility poles and lines from proposed rights of way of roads in the county when the contract exceeds five hundred dollars and the poles and lines are now on private property.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Yours very truly,

John M. Dalton
Attorney General

HEV:vlw