

SCHOOLS:
PURCHASE OF
SURETY BONDS:

Successful bidder on a public works contract has discretion as to a selection of the surety or sureties for a surety bond. School bond cannot require that successful bidder purchase surety bond from a particular agent or broker.



November 8, 1957

Honorable Charles A. Witte
State Senator, 14th District
Route 1, Box 1547
Kirkwood 22, Missouri

Dear Senator Witte:

This is in answer to your opinion request to this office dated September 30, 1957, which reads as follows:

"May a school district, in connection with letting of contracts for construction of public works require that the successful bidder under competitive bids obtain a surety bond from a particular agent or broker named in the contract documents; or is such action violative of the competitive bid requirement or other provisions of law relating to contracts on public works."

With regard to surety bonds of public works contractor, Section 107.170, RSMo 1949, provides in part as follows:

It is hereby made the duty of all officials, boards, commissions, commissioners or agents of * * * any * * * school * * * district in this state in making contracts for public work of any kind to be performed for the * * * school * * * district to require every contractor for such work to execute a bond to the * * * school * * * district * * * with good and sufficient sureties and in an amount to be fixed by said officials, boards, commissions, commissioners or agents and such bond among other conditions shall be conditioned for the payment of material lubricants, oil, gasoline, grain, hay, feed, coal, and coke, repairs

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on machinery, groceries and foodstuffs, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums, both compensation, and all other kinds of insurance, on said work, and for all labor performed in such work whether by subcontractor or otherwise."

As can be seen from a reading of the above statutory provisions, the officials of a school district have the duty and are given the power to require that a contractor doing work for the school district give a surety bond. As to the bond itself, the statute requires that it have "good and sufficient sureties"; be in an amount to be fixed by the officials of the school district; and provide for the payment of certain named liabilities incurred by the contractor in the course of the construction. The statute does not give the officials of the school district the duty or the power to designate from whom the contractor shall purchase the bond or who said contractor shall select to be surety or sureties thereon. The statute only gives the officials of the school district the power to determine whether the surety or sureties offered by the contractor are "good and sufficient".

In State ex inf. v. Madgett, 297 S.W. 2d 416, which involved ouster proceedings against the Buchanan County judges, and which ouster was ordered by the court, one of the contentions upon which the Missouri Supreme Court upheld the ouster was that the judges of the county court required as a condition to their approval of the county collector's bond that a certain individual agent would be allowed to write a portion of the bond. The Supreme Court held that it was no concern of the county court as to what agent or broker wrote the official bond of the county collector and received the commission thereon. It is the opinion of this office that this case is applicable to your specific question, and would also apply with relation to any other bond contemplated by a contract or a statute.

CONCLUSION

It is the opinion of this office that a school district cannot require that the successful bidder on a public works contract obtain a surety bond from a particular agent or broker named in the contract documents as the school district has only the power to determine whether the surety or sureties

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offered by the successful bidder are "good and sufficient". The selection of the surety or sureties for the successful bidder's surety bond is a matter entirely within the discretion of the successful bidder.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard W. Dahms.

Yours very truly,

John M. Dalton
Attorney General

RWB/bi