

COUNTIES:  
COUNTY OFFICERS:

Class 2 county officers are not authorized by the provisions of Section 50.660 to make purchases of \$100.00 or less without approval of county court and certification of county auditor.

March 23, 1961



Honorable Earl R. Blackwell  
Senate Post Office  
Capitol Building  
Jefferson City, Missouri

Dear Senator Blackwell:

This is in response to your request for an opinion dated February 20, 1961, which reads as follows:

"Several county officials in Jefferson County, being a county of the 2nd class, have requested me to obtain an opinion from your office on the following question:

"Under Section 50.660, RSMO 59, or other provisions of the Laws, can county office holders in counties of the 2nd class make purchases in amounts of \$100.00 or less from any one person, firm, or corporation during any period of thirty days? In other words, can they individually make such purchases without going through any other department of county government?"

Section 50.660, RSMo 1959 provides as follows:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment or services other than personal made by the officer in charge of purchasing in any county having the officer. No contract or order imposing any financial obligation on the county is binding on the county unless it is in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which it is to be charged and a cash balance otherwise

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unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation incurred and unless the contract or order bears the certification of the accounting officer so stating; except that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it is sufficient for the accounting officer to certify that the bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least five hundred copies per issue, if there is one, except that the advertising is not required in case of contracts or purchases involving an expenditure of less than five hundred dollars, in which case notice shall be posted on the bulletin board in the courthouse. It is not necessary to obtain bids on any purchase in the amount of one hundred dollars or less made from any one person, firm or corporation during any period of thirty days. All bids for any contract or purchase may be rejected and new bids advertised for. Contracts which provide that the person contracting with the county shall, during the term of the contract, furnish to the county at the price therein specified the supplies, materials, equipment or services other than personal therein described, in the quantities required, and from time to time as ordered by the officer in charge of purchasing during the term of the contract, need not bear the certification of the accounting officer, as herein provided; but all orders for supplies, materials, equipment or services other than personal shall bear the certification. In case of such contract,

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no financial obligation accrues against the county until the supplies, materials, equipment or service other than personal are so ordered and the certificate furnished."

Prior to its repeal and re-enactment in 1957, the foregoing section placed a twenty-five dollar maximum on purchases where competitive bids were not necessary. The most recent repeal and re-enactment, V.A.M.S. 1959, S.B. 64, effected no substantial changes in this section.

Sections 50.760 and 50.780, RSMo 1959, pertain to the acquisition of items needed for the operation of counties of the second class and must also be considered in determining the authority for and method to be followed in making purchases. Section 50.760 reads as follows:

"It shall be the duty of the judges of the county court in all counties of the second class, on or before the first day of February of each year, to determine the kind and quantity of supplies, including any advertising or printing which the county may be required to do, required by law to be paid for out of the county funds, that will be necessary for the use of the several officers of such county during the current year, and to advertise for sealed bids and contract with the lowest and best bidder for such supplies. Before letting any such contract or contracts the court shall cause notice that it will receive sealed bids for such supplies, to be given by advertisement in some daily newspaper of general circulation published in the county, such notice to be published on Thursday of each week for three consecutive weeks, the last insertion of which shall not be less than ten days before the date in said advertisement fixed for the letting of such contract or contracts, which shall be let on the first Monday in March, or on such other day and date as the court may fix between the first Monday of March and the first Saturday after the second Monday in March next following the publication of such notice; provided, that if by the nature or quantity of any article or thing

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needed for any county officer in any county of this state to which sections 50.760 to 50.790 apply, the same may not be included in such contract at a saving to such county, then such article or thing may be purchased for such officer upon an order of the county court first being made and entered as provided in sections 50.760 to 50.790; and provided further, that if any supplies not included in such contract be required by any such officer or if the supplies included in such contract be exhausted then such article or thing may be purchased for such officer upon order of the county court first being made and entered of record as provided in sections 50.760 to 50.790."

Section 50.780 provides:

"It shall hereafter be unlawful for any county or township officer in any county to which sections 50.760 to 50.790 apply to purchase any supplies not contracted for as provided in sections 50.760 to 50.790, for his official use and for which payment is by law required to be made by the county, unless he shall first apply to and obtain from the county court an order in writing and under the official seal of the court for the purchase of such supplies, and in all cases where the supplies requested by such officer have been contracted for by the county court as provided in sections 50.760 to 50.790, the order shall be in the form of a requisition by said officer addressed to the person, firm, company or corporation with whom or which the county court has made a contract for such supplies, and presented to the county court for approval or disapproval; and unless approval be given such requisition shall not be filled and any such requisition filled without such approval shall not be paid for out of county funds. The county shall not be liable for any debts for supplies except debts contracted as provided in sections 50.760 to 50.790. The best price and the quality of supplies shall be considered and supplies of a higher price or quality than is reasonably required for the purposes to which

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they are to be applied shall not be purchased or contracted for. Preference to merchants and dealers within their counties may be given by such judges, provided the price offered is not above that offered elsewhere."

The portion of Section 50.760 referring to advertising for competitive bids has been construed by a previous opinion of this office "to include the ordinarily foreseeable items to be used by the various county officials in the conduct of their offices." Opinion of Attorney General to Frank D. Connett, Jr., January 27, 1955, attached herewith.

Upon the premise that Section 50.660 must be read so as to harmonize with Sections 50.760 and 50.780, if at all possible, it appears to us that the portion of Section 50.660 which gives rise to your question ("It is not necessary to obtain bids on any purchase in the amount of one hundred dollars or less made from any one person, firm or corporation during any period of thirty days.") must be construed to govern only the maximum purchase that may be made without advertisement for bids rather than the officers who may make the purchases or the method they may follow.

In this connection, your attention is invited to the final proviso clause of Section 50.760 which reads as follows: "and provided further, that if any supplies not included in such contract be required by any such officer or if the supplies included in such contract be exhausted then such article or thing may be purchased for such officer upon order of the county court first being made and entered of record as provided in Sections 50.760 to 50.790." Moreover, Section 50.780 makes unlawful the purchase of any supplies by any county or township officers "not contracted for as provided in Sections 50.760 to 50.790" unless the county court has previously issued a written order for the purchase of such supplies.

It should also be noted that, subject to the exceptions set out therein, Section 50.660 specifies as prerequisites to a binding contract that there be a balance "otherwise unencumbered to the credit of the appropriation to which it is to be charged and a cash balance otherwise unencumbered in the treasury \* \* \*, each sufficient to meet the obligation incurred" and that the contract bear the certification of the accounting officer so stating. Inasmuch as "accounting officer" as used in Section 50.660 means county auditor, Section 50.530, RSMo 1959, it would also be necessary that the contract be submitted to the county auditor for the required certification.

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CONCLUSION

It is the opinion of this office that Section 50.660, RSMo 1959, does not authorize a county officer of a county of the second class to make purchases in amounts of one hundred dollars or less without securing the approval of the county court in the manner required by Sections 50.760 and 50.780, RSMo 1959. As a condition to its validity, the proposed contract must also be certified by the county auditor as required by Section 50.660, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Albert J. Stephan, Jr.

Very truly yours,

THOMAS F. EAGLETON  
Attorney General

AJS:cr  
Enclosure