

July 26, 1963



Honorable R. J. King, Jr., Member
Missouri House of Representatives
39 Ridgemore Drive
Clayton 5, Missouri

Dear Mr. King:

Your request of April 15, 1963, for the opinion of this office posed a question whether a political subdivision of Missouri, after having called for bids on insurance coverage, could reject the bid of a mutual insurance company when such bid reflected a sum representing an estimated, but undeclared dividend for the policy period. On the face of your inquiry it was disclosed that the question you submitted was posed to you by a member of a large insurance agency.

On April 19, 1963 this office indicated to you, by letter, that a preliminary survey would be made to determine unknown factors entering into this picture. Investigation discloses that the inquiry involves the writing of automobile casualty coverage as distinguished from fire and comprehensive coverage on residential or commercial properties, and that the particular type of political subdivision involved was a sewer district.

The only data this office has obtained to date in relation to the question you submitted is that compiled with reference to sealed proposals invited by the Metropolitan St. Louis Sewer District on January 9, 1963. Of eleven bids submitted pursuant to the invitation of January 9, 1963 only one bid was submitted by or on behalf of a mutual company. Such bid reflected on its face a total gross annual premium for the proposed coverage, accompanied by an estimated current dividend to be deducted from the gross premium, resulting in a net annual premium. We accept such bid as reflecting the factual situation to which

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your question was addressed.

We have found no statute prohibiting this type of bidding. On its face the bid reflects the base cost of the coverage to the political subdivision. The estimated dividend is undeclared and speculative but bears no character of deception. Your question goes to the right of the political subdivision to reject the bid, rather than to its right to accept it. It is interesting to note that the person posing the question to you in the first instance was an officer of the insurance agency finally receiving the business which was the subject of bidding pursuant to the invitation of January 9, 1963, and that such agency was placing the coverage with a stock company rather than a mutual company.

In your letter of inquiry you stated that "Several political subdivisions have thrown out such bids, advising these companies that they could not accept anticipated dividends as a firm bid." Such a stated reason for rejecting the bids seems to reflect sound business judgment, and no doubt the officers of the political subdivisions involved were fully acquainted with the basic statutes governing their political subdivisions, and found no directive in those statutes requiring that they accept such bids embracing a speculative factor. We notice that the invitation for bids extended by the Metropolitan St. Louis Sewer District on January 9, 1963 recited that "The District reserves the right of selecting the proposal that in its opinion is best." We have established the fact that the Metropolitan St. Louis Sewer District is a political subdivision established by constitutional authority (Mo. Const. Art. VI, Sections 30(a) and 30(b)), with full power to enact ordinances to insure orderly administration of the political subdivision. We have no evidence at hand to disclose that the Metropolitan St. Louis Sewer District was without authority to reject the bid of the mutual insurance company submitted in answer to the invitation for bids submitted on January 9, 1963. Reference has been made to the Metropolitan St. Louis Sewer District solely because such political subdivision was the only one specifically brought to light in the preliminary examination we made touching your question.

You are fully aware of the different types of political subdivisions in our State government, and of the fact that their powers differ in many respects. It does not seem feasible to search all such statutes to determine the authority of one or all of these political subdivisions to reject the type of insurance coverage bid submitted by the mutual company in answer to the invitation for bids made on January 9, 1963. No statute of general application affecting the acceptance or rejection of bids touching

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the cost of construction or maintenance of properties of political subdivisions has been found.

If you feel that this letter of advice, in lieu of a formal opinion, directed to your inquiry presents an unreasonable approach to the real problem, this office will be pleased to search the statutes relating to powers of any particular political subdivision you may describe.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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