

COUNTIES:  
COUNTY COURTS:  
PUBLIC ROADS:

The County Court of Washington County must comply with the method of letting contracts for the construction of roads, as provided in Section 229.050, RSMo 1959, when the estimated cost thereof exceeds the sum of \$500.

Opinion No. 224

June 7, 1966



Honorable Robert L. Carr  
Prosecuting Attorney  
Washington County  
Potosi, Missouri

Dear Mr. Carr:

This is in response to your request for an opinion which reads in part as follows:

"The County Court of Washington County, Missouri, has directed me to request the views of your office in the matter of purchases of asphalt to be applied by the supplier to public roads of Washington County.

"The Missouri State Highway Department has indicated to the County Court of Washington County that the department considers it to be its responsibility to determine that purchases of asphalt to be applied by the supplier be made under the requirements of Section 229.050, RSMo 1959. At present, the Washington County Court purchases asphalt, applied, at rates per gallon, as set out in the enclosed contract for the current year. Section 229.050, RSMo 1959, and the bidding therein provided, has not been followed by the County."

In addition, you have informed this office that the cost of the asphalt purchases under the subject contract is in excess of \$500.

Thus, the question presented is whether purchases of asphalt for the public roads of Washington County are to be made under the provisions of Section 229.050, RSMo 1959, providing for the letting of contracts after advertising and bidding, and providing that the contract shall be awarded to the lowest possible bidder.

It is the opinion of this office that your question must be answered affirmatively.

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Section 229.050, RSMo 1959, states:

"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 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 . . .

"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

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contract shall have attached to and made a part thereof the proposal sheet, instructions to bidders, the bid, maps, plans, specifications and profiles."

In Hillside Securities Co. v. Minter, et al, 254 SW 188, 300 Mo 380, the Supreme Court, en banc, considered the question which you propound. The Court stated:

"Section 10734 [now Section 229.050, RSMo 1959] provides an exclusive method of letting contracts for the construction of bridges by the county court. It requires that all work let by contract, of an estimated cost of over \$500.00, shall be let, after due advertisement, upon bids made upon maps, plans, specifications, and profiles, previously prepared by the highway engineer. That the statute does not contemplate the letting of contracts upon plans other than those submitted by the highway engineer and approved in advance of advertising and acceptance of bids of contractors bidding upon such plans is clear . . . " 254 SW 190.

The Court, in the Hillside Securities case, affirmed the general principle upon which its holding was based, quoting from an earlier decision, Wolcott v. Lawrence County, 26 Mo 272. The Court there stated:

"The county court is only the agent of the county, and, like any other agent, must pursue its authority and act within the scope of its power. In respect to many things that concern the county, it has a large discretion; but in reference to the erection of county buildings its authority is defined by a public law, and is special and limited. It cannot act like general agents, whose acts may bind their principles if performed within the general scope of their agency, though in violation of private instructions unknown to those who deal with them; for it has no power over the subject except such as is given by law; and every person who deals with the county court, acting in behalf of the county, is bound to know the law that confers the authority. . ."

Further, the court held that since contracts not entered into in compliance with this statute are void, recovery will be allowed neither under the contract, nor under the theory of quantum meruit. Hillside Securities Co. v. Minter, supra, at page 193.

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The Hillside Securities case was followed in the later case of Hanick v. Marion County, 278 SW 730, 312 Mo 81.

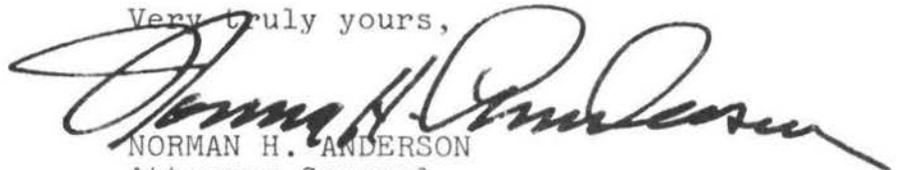
These cases appear to represent the law in this state on the point raised in your request. Thus, under these authorities, the contract between the County Court of Washington County and the supplier of asphalt, since it was entered into without compliance with the bidding requirements of Section 229.050, RSMo 1959, is void.

CONCLUSION

It is the conclusion of this office that the County Court of Washington County must comply with the method of letting contracts for the construction of roads, as provided in Section 229.050, RSMo 1959, when the estimated cost thereof exceeds the sum of \$500.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donald R. Wilson.

Very truly yours,



NORMAN H. ANDERSON  
Attorney General