

**OPINION
70-87**

September 29, 1970(OPINION)

Mr. Curtis Olson
State Auditor

RE: Counties - Bridges - Advertisement for Bids

This is in response to your letter in which you state the following:

1. If the estimate of the bridge is \$7,000 or over, must the county advertise for bids and award to the lowest responsible bidder? If all bids are rejected by the county, should the above procedure again be followed as outlined in 24-08-01?
2. If the county furnishes its own bridge material (lumber, precast concrete beams, piling, etc.) is the value of material to be used in determining estimating purposes?
3. Who is responsible for monitoring the compliance of the law outlined in 24-08-01 and 24-08-03 that the county submit to the North Dakota Highway Department, plans on bridge structures when the estimate is \$7,000 and over?"

As to the first question, section 24-08-01 states in substance that when a majority of freeholders living within a radius of three miles of a proposed bridge location petition the Board of County Commissioners and if the cost of the bridge will exceed \$100, the board shall investigate the necessity of the proposed bridge. It continues by providing that if the board determines that a necessity for the bridge exists, it shall advertise in the official newspaper of the county for a period of 30 days. Such advertisement shall state the plans and specifications of the proposed and ask for sealed bids. Thus, if the bridge you refer to comes under the provisions of section 24-08-01, and the cost of such bridge exceeds \$100, the county commissioners must advertise for bids as specified in said section. The same section also provides that if all bids are rejected the county commissioners must readvertise for bids.

However, in rebuilding or repairing bridges, if the estimate of the county engineer places the cost in excess of \$7,000 the county commissioners must then advertise for bids after obtaining the approval of the Highway Department. If bids are rejected, the county commissioners must then again readvertise as provided for in section 24-08-01.

As to question number two, it is the lowest responsible bid which is the determinative factor. The county commissioners are not required to determine the total value of the bridge or for that matter the material, lumber, precast concrete beams, piling, etc., in arriving at the total cost of the bridge. If the Board of County Commissioners receives a bid of \$7,000 or more, the project must be disposed of by letting bids.

The Board of County Commissioners may undertake to do the installation or construction of a bridge only if the lowest responsible bid is less than \$7,000. Only where such bid is received, may the county commissioners negotiate or enter into contracts for labor or material without letting bids for the entire project provided the work will be performed under the supervision of the Board of County Commissioners. In this respect, the board of County Commissioners must determine in addition to the bid if it is under \$7,000, that the bidder is a responsible bidder before it may resort to constructing the bridge under its supervision. The total cost is not the governing factor, but rather the lowest responsible bidder.

As to question number three, section 24-08-03 requires that when the rebuilding or repairing of a bridge exceeds the sum of \$7,000 on the estimate of the county engineer, and upon approval of the estimate by the Highway Department, the county commissioners shall advertise for bids, in the manner provided for in section 24-08-01. Under this provision, the estimates of the county engineer would be controlling. At any time when the estimates exceed the sum of \$7,000 approval of the Highway Department becomes essential. In arriving

at the estimates, the total cost of rebuilding or repairing a bridge must be taken into account. Piecemealing the cost and allocating material separately for purposes of bringing the total cost below \$7,000 is not permitted. This limitation, however, does not apply where a bridge is destroyed by flood, fire or other casualty if the public interest would suffer by delaying the repairing or rebuilding of the bridge.

If the law is followed, the Highway Department would necessarily be informed of any bridge repair or rebuilding where the total cost exceeds \$7,000. We are, however, unaware of any officer designated by statute who would monitor the activities of the Board of County Commissioners to determine whether or not the same are complying with the appropriate laws.

The state auditor, in examining the books and records of a county court in most instances determine whether or not the county commissioners had complied with the appropriated provisions of law as to letting bids, etc. This would be incidental to the auditing of the county financial records. We do not mean to imply that the state auditor must monitor the transactions of the county commissioners except through the financial transactions. However, any person who has knowledge to the effect that the county commissioners are not complying with the law can call this to the attention of the appropriate officials and in most instances, necessary corrective action will be taken. In addition to this, if expenditures are made in an unlawful manner, the individual county commissioners participating in such transaction, could be held personally liable to the extent of the amount involved.

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