

public inspection at all reasonable hours, between the date of such notice and the making of such contract.” (Italics the writer’s.)

The above section provides in substance that when plans, drawings, representations, bills of material, specifications and estimates are made and approved, notice shall be given as therein provided stating the time when, and the place where sealed proposals will be received for the doing of certain work.

The above section further provides that the notice shall state when and where “such plan or plans, descriptions, bills and specifications can be seen.” The last sentence, which has been italicized, states that “they shall be open to public inspection * * * .” The word “they” obviously refers to those things described in the sentence immediately preceding. You have no doubt noted that in this sentence the word “estimate” is omitted, while it is included in the first portion of the section. Whether this omission was intentional on the part of the legislature or otherwise, it must be assumed that the language was used advisedly. It would therefore appear that the estimates need not be open to public inspection unless other provisions of law make it apparent that such was not the intent of the legislature.

I call your attention to Section 2358 of the General Code, which provides that no contract for an improvement shall be let at a cost in excess of the estimates. It seems to me to be a fair inference that the legislature did not intend that bidders should be put to the trouble and expense of the preparation and submission of bids when a comparison of those bids with the estimate would immediately demonstrate that no action thereon could legally be taken by the board of county commissioners.

I further call to your attention the fact that, in so far as most improvements are concerned, it is necessary that special financing, such as a note or bond issue, is necessary before the contract can be let. Wherever, therefore, such special financing is required, the bidder would have a fairly close approximation of the amount of the estimates for the proposed improvement, since the amount of financing is determined by the estimates of the cost of the improvement, plus some other comparatively negligible items.

I am also informed that it is now generally the practice to make available to the bidders the amount of the estimates and I therefore am of the opinion that while it is not perhaps the mandatory duty of the commissioners to make available for public inspection the estimates for a proposed improvement, it is the better and more desirable course to pursue.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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MUNICIPAL CORPORATION—OFFICERS MAY NOT REQUIRE BIDS FOR PUBLIC CONTRACTS TO BE ACCOMPANIED BY A CERTIFIED CHECK UPON A BANK LOCATED IN SUCH MUNICIPALITY.

SYLLABUS:

Officers of a municipal corporation may not under the provisions of Section 4329, General Code, require bids for public contracts to be accompanied by a certified

check upon a bank located in such municipality and arbitrarily refuse to accept a bid accompanied by a certified check on any solvent bank of the State of Ohio.

COLUMBUS, OHIO, May 24, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of recent date, which reads as follows:

“Section 4329 of the General Code reads:

“The bids shall be opened at twelve o'clock noon, on the last day for filing them by the director of public service and publicly read by him. Each bid shall contain the full names of every person or company interested in it, and shall be accompanied by a sufficient bond or certified check on a solvent bank, that if the bid is accepted a contract will be entered into and the performance of it properly secured. If the work bid for embraces both labor and material, they shall be separately stated with the price thereof. The director may reject any and all bids. Where there is reason to believe there is collusion or combination among bidders, the bids of those concerned therein shall be rejected.”

Question:

May the officers of a municipal corporation require a certified check on a bank in such municipality or must such officers accept a certified check from a bidder on any solvent Ohio bank?”

You inquire as to the right of the officers of a municipal corporation to require under Section 4329, General Code, bids for public contracts to be accompanied by a certified check upon a solvent bank in such municipality as distinguished from any solvent Ohio bank.

Additional information furnished at my request discloses that the municipality in question neither by charter provision nor by general ordinance has attempted to make this added requirement. I am therefore not passing upon the power of a municipality to render inoperative provisions of the general law by specific charter authority or appropriate action of its legislative body. This opinion is based solely upon the state law applicable, since no local legislation to the contrary exists.

In answering your question it is necessary to interpret the meaning of the term “solvent bank” as such words are used in Section 4329, *supra*. By the provisions of Section 4328, General Code, the Director of Public Works must be authorized and directed by council so to do before entering into a contract involving the expenditure of more than five hundred dollars for the purchase of supplies or materials or to provide labor for work under his jurisdiction. Said section then provides:

“ * * * When so authorized and directed, the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the city.”

Section 4329 of the General Code makes provision for the contents of bids where furnished by bidders after authority to let a contract has been given by council and advertisement for bids has been made as provided in Section 4328 of the General Code, *supra*.

Section 4329, *supra*, reads as quoted in your letter, the pertinent part thereof providing:

“ * * * Each bid shall contain the full names of every person or company interested in it, and shall be accompanied by a sufficient bond or certified check on a solvent bank, that if the bid is accepted a contract will be entered into and the performance of it properly secured. * * * .”

It will be observed that the provision above quoted does not designate the particular locality in which the bank upon which the check accompanying the bid be drawn must be located, the only qualification being that the check must be on a “solvent bank”.

Although it has been held in the case of *State ex rel. vs. Board of Public Service*, 81 O. S. 281, that broad latitude is given to the board of control in its discretion to reject any and all bids after they have been submitted, yet, the legislature has in express terms made provisions as to the giving of security on the part of a bidder, conditioned that if his bid be accepted, a contract will be entered into and the performance of the work properly secured.

By the terms of this section the legislature has not laid down the qualification that the check must be drawn upon a bank located in the municipality, but has used the general language which indicates that accompanying the bid with a certified check on any solvent bank is a sufficient compliance with the terms of said section. In other words, the only requirement of the statute is that the bank must be solvent.

It will be observed that the legislature has qualified the word “bond” as it has used the word in Section 4329, *supra*, by the word “sufficient.” The municipal officers might therefore question the sufficiency of the bond as to sureties and refuse to accept a bid if they had reasonable doubt as to the ability of the surety or sureties to make payment in case of a default. This would be a matter of discretion but the discretion exercised must be reasonable.

In the case of *Boren vs. Commissioners*, 21 O. S. 311, it was held that it was within the discretion of the board of county commissioners to require the sureties upon a bond to be residents of the state. However, in the case of a certified check a bidder complies with both the spirit and the express language of the statute if he furnishes a certified check on some solvent bank and the municipal officers may not arbitrarily refuse to accept a bid accompanied by a certified check upon a solvent bank in the state.

To limit the meaning of the term a “solvent bank” as used in said section to a bank in the municipality might have the effect of limiting, if not destroying, competitive bidding by making it difficult if not impossible for persons, firms or corporations nonresidents of the city to furnish a certified check.

I am therefore of the opinion that officers of a municipal corporation may not require bids for public contracts to be accompanied by a certified check upon a bank located in such municipality and that under the provisions of Section 4329, General Code, such officers may not arbitrarily refuse to accept a bid accompanied by a certified check on any solvent bank in the State of Ohio.

Respectfully,

EDWARD C. TURNER,

Attorney General.