

**OPINION NO. 69-127****Syllabus:**

A village cannot compensate either a contractor or the contractor's supplier for materials purchased and used by the contractor pursuant to an invalid contract with the village.

---

**To: James K. Nichols, Morgan County Pros. Atty., McConnellsville, Ohio**  
**By: Paul W. Brown, Attorney General, September 25, 1969**

I have before me your request for my opinion which sets out a situation in which the Village of McConnellsville had authorized, in a verbal contract, the repair of one or two streets. While repairing the streets the contractor noticed that several connecting streets also needed repair and contacted one of the village councilmen, who authorized the additional improvements. With the purchase of additional material, the entire work for the repair of these roads involved an amount exceeding \$1500, and, in fact, amounted to approximately \$3000.

Your concern is with Section 731.14, Revised Code, which requires advertisement for bids when an expenditure is to exceed \$1500. You ask how the village council can make payments to the contractor or the contractor's supplier for materials purchased and used by the contractor pursuant to its contract with the village.

Section 731.14, Revised Code, reads as follows:

"All contracts made by the legislative authority of a village shall be executed in the name of

the village and signed on its behalf by the mayor and clerk. When any expenditure, other than the compensation of persons employed therein, exceeds one thousand five hundred dollars, such contracts shall be in writing and made with the lowest and best bidder after advertising for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the village. The bids shall be opened by the clerk of such village at twelve noon on the last day for filing them, and shall be publicly read by him. This section does not apply to those villages that have provided for the appointment of a village administrator under section 735.271 [735.27.1] of the Revised Code."

With respect to the provisions of Section 731.14, supra, it is clear that there was a violation of the competitive bidding requirement. It is also apparent that both the verbal contract and the village councilman's authorization of additional improvements violated the requirement that all contracts made by the legislative authority of a village be executed in the name of the village and signed by the mayor and clerk. Consequently the contract is invalid.

I would refer you to The Frisbie Company v. The City of East Cleveland, 98 Ohio St. 266 (1918) where the court declared that:

"\* \* \* \* \*"

"It is well settled in this state that where the statute prescribes the mode by which the power therein conferred upon a municipal body shall be exercised, the mode specified is likewise the measure of the power granted, and that a contract made otherwise than as expressly prescribed and limited by statute is not binding or obligatory as a contract.\* \* \*

"\* \* \* \* \*"

This view was also set forth in the case of Wellston v. Morgan, 65 Ohio St. 219 (1901) where it was decided that:

"\* \* \* \* \*"

"3. To state a good cause of action against a municipality in matters ex contractu the petition must declare upon a contract agreement, obligation or appropriation made and entered into according to statute. A petition on an account merely, or quantum meruit, in such cases, is not sufficient.

"\* \* \* \* \*"

Therefore, it becomes clear that there can be no legal obligation on the part of a village to make any payments based on an invalid contract.

Your letter raises the question of whether the village council may authorize payments based on a moral obligation. With respect to the contractor I would cite you Welch v. City of Lima, 89 Ohio App. 457 (1950). In that case the court declared a contract invalid and stated that:

" \* \* \* \* \* \* \* \*"

"Persons dealing with municipal corporations are charged with notice of all limitations upon the authority of the municipality or its agents, and they are required, at their peril, to ascertain whether statutory requirements relating to the subject of the transaction have been complied with.

" \* \* \* \* \* \* \* \*"

I would also refer you to Wellston v. Morgan, supra, in which the syllabus reads in part as follows:

"4. Persons dealing with officers of municipalities must ascertain for themselves and at their own peril that the provisions of the statutes applicable to the making of the contract, agreement, obligation or appropriation have been complied with."

This was followed in Philip Castner v. Village of Pleasant Ridge, et al., 7 N.P. (N.S.) (1907). In that case the court found a "total and careless disregard" of the statutory requirements by all parties concerned. Because of this, the Court decided that:

" \* \* \* \* \* \* \* \*"

" \* \* \* While it is a hardship on the firm which furnished the stone, yet a recognition of 'moral obligations' such as these would open the door to such unwarranted proceedings on the part of municipal officers that much evil would inevitably result.

" \* \* \* \* \* \* \* \*"

In the situation which you have outlined in your letter it is clear that both the contractor and the village councilman acted with total disregard for the provisions in Section 731.14, supra. Therefore, I can see no way that the village council can make payments to the contractor, based on a moral obligation.

With respect to the supplier who sold the materials to the contractor, you have stated that he was completely innocent of any wrong-doing, that to his knowledge he simply sold the material to the contractor who picked up the material at the disbursement center of the supplier. If the understanding was that the sale was merely one of material passing from a vendor (the supplier) to a purchaser (the contractor), then the sale was just that, and the supplier's legal remedy is against the

contractor and not against the village which was not a party to the transaction.

In Opinion No. 1330, Opinions of the Attorney General for 1939, the syllabus reads in part as follows:

"3. A claim based on a moral obligation may not lawfully be allowed and paid by a political subdivision unless such claim has a legal basis on which to stand. Such a claim must be acted upon by the proper legislative authority with a full knowledge of the facts and there must be a complete absence of any fraud or collusion."

In effect, a moral obligation is unenforceable unless also based on a claim which would provide a legal cause of action. In this case, however, the village was not a party to the transaction between the supplier and the contractor. Therefore, a claim on the part of the supplier against the village for the value of materials sold to the contractor has no legal basis. It is apparent, then, that the village council cannot compensate the supplier for materials purchased by the contractor on the basis of a moral obligation.

Therefore, it is my opinion and you are hereby advised that a village cannot compensate either a contractor or the contractor's supplier for materials purchased and used by the contractor pursuant to an invalid contract with the village.