

2099

PARK DISTRICT, TOWNSHIP—PROCEDURE FOR LETTING CONTRACTS—PROPER TO COMPLY WITH EITHER §511.12 OR §515.01 R.C.—ADVERTISING AND RECEIVING BIDS.

SYLLABUS:

The board of park commissioners of the township park district may let contracts for equipment and ground improvements after advertising for and receiving bids on such contract in a manner which will comply with the provision of either Section 511.12 or Section 515.01, Revised Code, with respect to advertising for and receiving bids.

Columbus, Ohio, May 8, 1958

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo 2, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“On behalf of the board of park commissioners of a township park district, which board was created under provisions of Revised Code Section 511.18 et. seq., I would like your opinion on whether advertising is necessary before expending substantial funds for the purchase of playground equipment, maintenance machinery and ground improvements such as the installation of tennis courts.

The only specific reference to this subject I have been able to find is in the first sentence of the second paragraph of Section 511.23 of the Revised Code of Ohio.”

Section 511.23, Revised Code, sets out the duties and powers of the park board. In this section it is stated:

“* * * the board of park commissioners shall constitute a board, * * *. It may locate, establish, improve, and maintain a free public park within and without the township, and may accept a conveyance of or purchase or appropriate suitable lands and materials for that purpose. * * *

The board shall devise plans for the improvement of the park, and award all contracts therefor, *in the manner provided by the law governing township trustees in awarding contracts for public improvements.* * * *” (Emphasis added)

From a reading of this section it can be seen that the park board has the power to make the improvements which you mention in your request.

The law governing township trustees in awarding contracts for public improvements is stated in more than one section, depending on the type of improvement to be made. The more general provisions for making such awards are found in Section 501.18, Revised Code. This section provides with respect to school and ministerial lands:

“* * * Whenever the estimated expense of such improvements will not exceed one hundred dollars, the board may cause such improvements to be made under contract, specifying the character of the improvement, the kind and quality of materials to be used, the labor to be employed, and the quality of work to be performed, which contract shall be for a specific sum not in excess of one hundred dollars. No such contract shall be entered into where the completion of an improvement will require more than one contract. Whenever the probable cost of such improvement will exceed one hundred dollars, the board shall cause plans, details, bills of material, and estimates thereof to be prepared in the manner and form provided by Section 153.01 of the Revised Code.”

This section then provides for the submission of plans, details, bills of material, and estimates for approval and further provides:

“Thereupon the Board shall give public notice, in the manner prescribed by the supervisor in such approval, of the time and place where sealed proposals will be received for making such improvements and a contract awarded therefor. On the day named in such notice, the board shall open the proposals and award the contract to the lowest bidder, and shall forthwith transmit a copy of such bid to the supervisor. * * * If in the opinion of the Board, the acceptance of the lowest bid is not for the best interests of the trust, it may, with the written consent of the supervisor, accept another proposal so opened, or reject all proposals and advertise for others in the manner provided by this section.”

Section 511.12, Revised Code, provides:

“The board of township trustees may prepare plans and specifications and make contracts for the construction and erection of a memorial, * * *. In making such contracts the board shall be governed as follows:

(A) * * *

(B) Contracts shall be made in writing upon concurrence of a majority of the members of the board, and shall be signed

by at least two of such members and by the contractor, after an advertisement in two newspapers, published or of general circulation in the township, for a period of thirty days.

(C) No contract shall be let except to the lowest and best bidder, * * *."

In Section 515.01, Revised Code, it is provided in the case of lighting that:

"The board of township trustees may provide artificial lights for any road, highway, public place, or building under its supervision or control, or for any territory within the township and outside the boundaries of any municipal corporation, when the board determines that the public safety or welfare requires that such road, highway, public place, building or territory shall be lighted. * * *

"If the board determines to procure such lighting by contract, it shall prepare plans and specifications for the lighting equipment and shall, for two weeks, advertise for bids for furnishing such equipment, either by posting such advertisement in three conspicuous places in the township or by publication thereof once a week, for two consecutive weeks, in a newspaper of general circulation in the township.

"The contract for such lighting shall be made with the lowest and best bidder, * * *."

An examination of these sections relating to the powers and duties of township trustees discloses that the prevailing method of letting contracts for improvement of public lands is through the submission of bids after advertising for their submission.

The improvements contemplated by the park commissioners as stated in your request for this opinion are not specifically covered by the sections which I have quoted. As indicated above it is provided in Section 511.23, Revised Code, that the board shall award all contracts for improvements in the manner provided by the law governing township trustees. It is noted, however, that the requirement in Section 501.18, Revised Code, of approval by the supervisor of plans, *etc.* and the designation of methods of advertising for bids by the supervisor would be inapplicable to the township park board. This is true because the supervisor, the state auditor, is a state officer and his approval is only required in the case of certain improvement of school or ministerial lands.

There is still the question in the law as to whether Section 511.12, or Section 515.01, Revised Code, should be followed as to the provisions

of advertising for bids for these improvements. This question is left because of the generality of Section 511.23, Revised Code. This general provision must be interpreted, in my opinion, to authorize the board of park commissioners to proceed in the instant case by advertising either as provided in Section 511.12 or 515.01, Revised Code. Where there is a choice, however, between two courses of action which will satisfy the law, as there is here, compliance with the more stringent requirements would clearly be the more conservative course, a course which would avoid any question of legality of the board's action in the instant case.

Therefore, it is my opinion that the board of park commissioners of the township park district may let contracts for equipment and ground improvements after advertising for and receiving bids on such contract in a manner which will comply with the provision of either Section 511.12 or Section 515.01, Revised Code, with respect to advertising for and receiving bids.

Respectfully,

WILLIAM SAXBE

Attorney General