

**OPINION NO. 65-139**

**Syllabus:**

1. The board of elections may let a contract for the printing of ballots to a bidder who does not reside in, but does do business in the county.
2. The board of elections may in their discretion

reject bids on the basis of cost and/or past performance of the bidder on other contracts performed for the board.

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**To: Ted W. Brown, Secretary of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, August 3, 1965**

Your request for my opinion reads as follows:

"Enclosed is a copy of a letter I have today received from the Clerk of the Board of Elections of Wyandot County. The problem with which he is concerned is one which occurs in a number of counties. It is not infrequent to find a county in which only one printer is equipped to print the ballots; and if the Board of Elections is compelled to award the contract to him regardless of the amount of his bid or the kind of service he gives, the purpose of having competitive bidding is frustrated. In the past, Boards of Elections have avoided this situation by declining to accept bids which were too high or from printers who have performed badly in the past by holding that the bidder within the county was not responsible and then awarding the contract to a lower bidder or more responsible bidder outside the county. Needless to say, this had caused some controversy.

"I would appreciate receiving your opinion as to whether or not Section 3505.13 of the Revised Code compels a Board of Elections to accept the bid of a bidder within the county if such bid is substantially in excess of bids submitted by printers outside the county or if past experience has shown that the bidder within the county cannot or will not perform satisfactorily.

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

The Ohio General Assembly has made provisions for the letting of contracts for printing ballots in Section 3505.13, Revised Code, which reads as follows:

"The contract for the printing of the ballots shall not be let until after five days' notice published once in two leading newspapers published in the county or upon notice given by mail by the board of elec-

tions, addressed to the responsible printing offices within the county. Each bid for such printing must be accompanied by a bond with at least two sureties, or a surety company, satisfactory to the board, in a sum double the amount of the bid, conditioned upon the faithful performance of the contract for such printing as is awarded and for the payment as damages by such bidder to the board of any excess of cost over the bid which it may be obliged to pay for such work by reason of the failure of the bidder to complete the contract. No bid unaccompanied by such bond shall be considered by the board. The contract shall be let to the lowest responsible bidder in the county. All ballots shall be printed within the state." (Emphasis added)

The purpose of Section 3505.13, supra, seems to be to encourage the boards of elections of the respective counties to do business with printers doing business in the county and thereby stimulate business within the county. However, it is my feeling, that while the General Assembly wanted to encourage the letting of printing contracts to local printers, they did not wish to make it mandatory that said contracts go to a local printer. At the end of Section 3505.13, supra, it is expressly stated:

"\* \* \*The contract shall be let to the lowest responsible bidder in the county. All ballots shall be printed within the state."

The problem arises in determining what "bidder in the county" means. Section 3505.13, supra, as it relates to notice of the contract being let reads as follows:

"\* \* \*notice published once in two leading newspapers published in the county or upon notice given by mail by the board of elections addressed to the responsible printing offices within the county.  
\* \* \*"  
(Emphasis added)

The notice provision carries the connotation of residency, because both newspaper and printing offices are stationary. However, no notice by mail has to be given to the responsible printing offices in the county if notice is published once in two leading newspapers. The decision of how notice is to be given is in the discretion of the board of election. If no notice is published, such notice must be mailed to the responsible printing offices in the county. There is no requirement that all of the printing offices be notified, or that one-half be notified or that even one office has to be notified. The

only requirement is that such offices be responsible and this decision must be made by the board of elections. The decision that the printing office is responsible is a discretionary one and can be attacked only when there is an abuse of discretion. Printing Company v. Yeatman, 22 C.C. 584. Since the General Assembly did not make it mandatory that the board of elections give personal notice to the printers within the county, it is my opinion that "bidder in the county" means doing business in the county rather than that the bidder must reside in the county.

If the printing office were located in the county but the owner lived outside the county, such non-resident owner could bid on and be awarded the contract to print election ballots. If the printing office were located outside the county and its owner lived within the county, said owner could bid on and be awarded the contract. Therefore, if both the owner and his printing office were located outside the county, it is my opinion that if such owner did business in the county he could bid on and be awarded the contract to print the ballots.

Therefore, it is my opinion, after reading Section 3505.13, supra, that the board of elections may let a contract for the printing of ballots to a bidder who does not reside in, but does do business in the county.

It is my feeling that the Ohio General Assembly sought to and did provide for competitive bidding in Section 3505.13, supra. The purpose of competitive bidding is to secure the best quality goods for the lowest price. If the bids are limited to residents of the county, the purpose for which competitive bidding was established could be frustrated. In some instances there are no bids from residents of the county or in many instances, there is only one bid. If non-residents cannot bid, the one resident bidder could charge two or three times the normal price and if the board was required to let the contract to such resident bidder it would constitute a gross misapplication of public funds, and in my opinion thwart the intent of the legislature.

However, the conclusion that the Board of Elections does not have to accept bids only from residents does not rest solely on the above analysis. The board of elections may reject the bid of a resident bidder because in their discretion such bidder is not responsible. The burden of proof is then on the rejected bidder to prove the board abused its discretion.

Whether or not the action of the board of elections in determining the "lowest responsible bidder" constitutes an abuse of discretion in a given case is a question of fact, which must be determined by all of the circumstances.

The Court in Hudson v. Board of Education, 41 Ohio App., 402, said in paragraph three of the syllabus:

"3. The term 'lowest responsible bidder' used in Section 7623,

General Code, does not mean the lowest bidder. A bidder is not necessarily a responsible bidder because he can give a construction bond. A board of education has a right in determining his responsibility to consider the character of work done by such bidder on other contracts performed for the same board."

It would then follow that if such bid is rejected, the effect is the same as having no local bidders and the contract could then be let to a non-county resident bidder.

Therefore, in conclusion, it is my opinion:

1. The board of elections may let a contract for the printing of ballots to a bidder who does not reside in, but does do business in the county.
2. The board of elections may in their discretion reject bids on the basis of cost and/or past performances of the bidder on other contracts performed for the board.