

702.

ELECTION SUPPLIES—PURCHASE WITHOUT COMPETITIVE BIDDING
—WHEN AUTHORIZED.

SYLLABUS:

Contract for election supplies discussed.

COLUMBUS, OHIO, August 2, 1929.

HON. JAY R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“The Deputy State Supervisors of Elections of Defiance County, Ohio, in compliance with Section 5050 of the General Code, advertised for bidders to print the ballots to be used at the coming primary election, to be held August 13, 1929. This section provides that the contract shall be let ‘to the lowest responsible bidder in the county.’ No bids were received for the printing of such ballots.

Question: How may they proceed to have such ballots printed? May they now let the contract for such printing without further advertising? May the contract be let to a bidder outside the county?”

As suggested in your communication, Section 5050 of the General Code, expressly provides that the contract for printing election supplies other than poll books and tally sheets shall be let to the lowest responsible bidder in the county. The section further provides that ten days’ notice shall be published not more than three times in two leading newspapers of opposite politics published in such county. In the case you present, it is evident that in view of the fact that the primary election must be held on August 13, in pursuance of statutory requirements, you cannot, from a practical standpoint, readvertise and have said ballots printed in pursuance of competitive bidding.

One of the fundamental principles in connection with our republican form of government is that elections be held to the end that the people may properly express themselves in the management of their government. If the technical requirement of Section 5050 must be required in the case you present, then it would be impossible for candidates to be nominated in pursuance of the express method provided by statute.

In an opinion of the Attorney General, reported in the Opinions of the Attorney General for the year 1925, page 656, at page 661, it was stated:

“In view of the fact that the holding of elections is fundamentally necessary for the proper conduct of government, any construction of a statute which would result in making elections impossible, should be avoided. The constitution in mandatory terms, article X, section 2, and article XVII, Section 1, provide for the holding of elections, and this mandate should be taken into consideration in construing the action of the General Assembly.”

The opinion held that the Burns Law certificate under Section 5660 of the General Code, was not necessary in obtaining contracts for election supplies.

In an opinion of the Attorney General, found in Annual Report of the Attorney General for the year 1913, at page 64, it was stated, as disclosed by the syllabus:

“When a deputy state board of election, through inadvertence, fails to

apprehend the requirements of an amendment to the statutes, submits plans and specifications, contract for which is duly awarded, which plans fail to specify an additional requirement of such amendment, and compliance with the law requires that the printing company be authorized to provide such additional printing of registration lists without the submission of further plans and bids and the company consents to perform such additional work upon such oral authorization, held:

That inasmuch as there was no indication of any intent to violate or ignore the provisions of the statute, and as emergency requires such action to be taken, the proceedings being entirely in good faith, the board should compensate such company for the additional work so performed."

It will be observed that the facts under consideration in the opinion last referred to are very similar to those presented by you. In that case for some reason the board of elections found itself needing supplies after the awarding of the main contract, which were not provided for in the contract, which was let in pursuance of competitive bidding. Under the circumstances, the Attorney General held that the party furnishing the additional supplies, was entitled to be compensated. There are other instances wherein the courts have held that the requirements as to competitive bidding may be dispensed with. To illustrate, courts have said that notwithstanding the express provisions of a statute requiring competitive bids, such procedure is not required in those instances wherein by reason of the very nature of the purchase contemplated the same is absolutely and essentially non-competitive. In other words, no competition is required in those instances where as a matter of fact the same is impossible.

Without further consideration, it is believed that inasmuch as there are mandatory provisions requiring a primary election to be held and enjoining the deputy state supervisors to provide for the same, and in view of the fact that an attempt has been made to comply with the provisions of Section 5050 of the General Code, and by reason of the circumstances it is impossible now to again advertise for bids, under such circumstances the board of elections may properly award the contract for printing such supplies without competitive bids to any person within or without the county who is in a position to furnish such supplies.

Respectfully,
GILBERT BETTMAN,
Attorney General.

703.

APPROVAL, BONDS OF BIG ISLAND TOWNSHIP, MARION COUNTY—
\$5,330.39

COLUMBUS, OHIO, August 2, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.