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Bids for Bonds: Written and Oral

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nor does it state that he must be engaged in teaching immediately prior to his induction, but it does state that any person who prior to the entry into such active service was a teacher by whom contributions were made into the fund, shall be entitled, upon his resumption of the teaching profession in the state to have his time of his service in such armed forces credited as teaching services.

I believe that this law should be liberally construed in favor of those who resume teaching after being discharged from military service. I have in mind a person who has been educated and trained for the profession of teaching and has been engaged in that profession for some time. He temporarily takes other employment for a month, a year, or several years, he is then inducted into the armed forces of the United States, he is honorably discharged and then resumes the work of a teacher. Another person who also has been educated and trained as a teacher is inducted into service. Upon his discharge he also resumes his work as a teacher.

The law was intended to benefit those who are engaged in the teaching profession. The fact that they may temporarily have been engaged in other work and while thus temporarily engaged are inducted into the armed forces of the United States should not deprive them of the benefits of this law.

Nor does it appear that the fund will suffer by permitting such a person or persons to receive credit for the time of service in the armed forces. He makes his contribution in accordance with the rates established, based upon the salary which he was receiving during his induction. In my opinion, therefore, it would only be fair and equitable to give a teacher credit for the time he served his country upon contribution of the amount required regardless of whether or not he was engaged in other work at the time of induction into service.

Very truly yours,

NELS G. JOHNSON
Attorney General.

By

P. O. Sathre
Assistant Attorney General.

POS:L

BIDS FOR BONDS: WRITTEN AND ORAL

September 3, 1947

Mr. Clyde Duffy
City Attorney
Devils Lake, North Dakota

Dear Mr. Duffy:

Re: Section 21-0327 R. C. 1943

Your letter of August 28th, 1947, addressed to the attorney general, requesting an interpretation of Section 21-0327 N. D. R. C. 1943, has come to my desk for attention.

Your request requires an interpretation of the above section, and, as the matter is of particular interest to the Bank of North Dakota, the bank officials have orally joined in your request. As the matter is of considerable importance, we have had an office conference on the subject and have given some considerable time to a study of the matter, and are all agreed upon the interpretation which follows.

This section provides, with reference to the opening of bids for municipal bonds:

"At the time and place specified, the governing board of the taxing district shall be represented by one of its officials, or by the county auditor or by some other person acting at the request of the board, who

shall receive competitive bids, whether submitted orally or in writing. When the bids are received at his office, the county auditor shall enter in a permanent record the amount and rate of interest of each bid and the name and address of the bidder. If the bids are not received at the office of the county auditor, the auditor, clerk or secretary of the municipality shall make a similar record."

It will be noted that no part of the applicable statute requires *sealed* bids. Section 21-0326 provides:

"Such notice may be in *any form* but shall specify *the amount of bonds* offered for sale, and the date of the maturity thereof." And Section 21-0327 provides that: "The notice shall specify the time and place at which bids will be received." The statute, section 21-0327, gives due notice to all bidders that competitive bids, whether submitted orally or in writing will be received. McQuillin says:

"The person or company making a bid, or entering into a contract with a municipality, acts at his peril. He is supposed to know the law—a very violent presumption it may be, but none the less effective. He is *persona non grata* with the courts, which must look to "the protection of the public."

3 McQuillin, Mun. Corp. 856, Sec. 285.

Our statutes, above cited, clearly require that municipal bonds be sold only on *competitive* bids. "Such requirements are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption in the awarding of municipal contracts, and to secure the best work or supplies at the lowest price practicable."

3 McQuillin, Mun. Corp., 858, Sec. 1286.

And further, the same author says:

"In order to attain competitive bidding in its true sense, proposals for bids must be invited under circumstances which afford a fair and reasonable opportunity for competition. Consequently, it is essential that the bidders, so far as possible, be put on terms of perfect equality, so that they may bid on substantially the same proposition, and on equal terms."

3 McQuillin, Mun. Corp. 886, Section 1309.

The statute here in question clearly informs all bidders that at a certain time and place bids, either oral or written, will be received for the bonds to be sold. These bids are to be *competitive* in order that the bonds may be sold on the best possible terms for the municipality. Clearly all bidders may appear in person and make their bids orally, and any bidder desiring to do so may submit a written bid. If a bidder appears in person and wishes to make a competitive bid, it is difficult to understand how he can compete with written bids without knowing what these bids are. If there are no written bids filed, then all bids must be oral. Surely these oral bids are made in competition between the oral bidders present, each bid being openly made so that all competing bidders may know with what bid they are competing. There is certainly nothing in the statute to indicate that the oral bids are to be made and received in secret. There is no need to define the words "competition" or "competitive." They import rivalry between the bidders, and there can be no rivalry unless each knows what the bid of his rival is. If all bids are oral bids, there is true competitive bidding. Can this rivalry be cut off by the filing of one or more bids in writing? These statutes do not provide for bids to be submitted only in writing and the awarding of the contract of sale to the best bidder. If such were the case, no oral bids could be received, and there would be no true competitive bidding, for each bidder would bid blindly, not knowing what any other bidder had offered.

Search has failed to find any adjudicated case interpreting a similar statute. Our interpretation must be reasoned from applicable principles of law. These we have indicated hereinbefore.

It is our opinion:

1. That both written and oral bids may be received for these bonds.
2. That oral bidders are entitled to know what the written bids are before they make their oral bids.
3. That oral bidders may make successive oral bids in open competition with each other.
4. That any bidder who has filed a written bid may enter into competition with the oral bidders and bid on an equal footing with them.
5. That the recording officer in charge of the receipt of bids must make a permanent written record of each bid received, as provided by section 21-0327, and each bidder must complete his final bid by making the deposit required of those filing written bids.

Very truly yours

NELS G. JOHNSON
Attorney General

By C. E. Brace
Assistant Attorney General

FILING FEES—DISCHARGE OF REAL ESTATE MORTGAGES

September 8, 1947

Mr. C. J. Schmidt
Clerk of District Court
Morton County
Mandan, North Dakota

Dear Mr. Schmidt:

This will acknowledge your letter of September 3, 1947, in which you request an opinion from this office relative to the filing fees to be charged, in connection with the discharge of real estate mortgages under the terms of section 35-0313 of the 1943 Revised Code, and for petition for change of name of an individual.

We have already held that subsection 10 of section 11-1704 of the 1943 Revised Code applies as to the fees to be charged by the clerk of the district court for filing of any proceeding involving the procedure for discharge of a real estate mortgage under the terms of section 35-0313 of the 1943 Revised Code. In an opinion to Mr. Register, dated August 6, 1945, we said in that connection:

"Another method of procedure which would serve the same purpose would be to file the original order and application in the office of the clerk of the district court, and to have a certified copy of the order filed in the office of the register of deeds, but, as we have pointed out, this is not an action and the filing fee would be governed by subdivision 10 of section 11-1704 which enumerates the fees to be charged by the clerk of the district court. Subdivision 10 provides, 'for recording and indexing any paper not filed in an action or proceeding, for the first four folios, fifty cents, and for each additional folio, ten cents'."

In another opinion, under date of June 25, 1947, we said this:

"Since there is no specific provision in section 11-1704 for recording of papers in connection with the proceedings for discharge of mortgages under section 35-0313, it is my opinion that subsection 10 of section 11-1704 would apply."