
May 10, 1943.

Honorable Otto K. Jensen, State Examiner,
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I am in receipt of your letter dated April 16, 1943, request-
ing my opinion as to the proper interpretation to be placed
upon the provisions of Chapter 129 of the Acts of 1943. Your
letter submits four questions which read as follows:

"1. Do the provisions of Chapter 129 of the Acts
of 1943, apply to purchases of materials, equipment,
goods and supplies to be paid for from the funds of
municipally owned public utilities?

"2. Is the provision, 'that if the cost of the mate-
rials, equipment, goods and supplies to be purchased
does not exceed five hundred dollars, the purchaser
may, invite bids from not less than three persons,
firms, or corporations, known to deal in the particular
class or classes of materials, equipment, goods, or sup-
plies described in the specifications, by mailing to each
person, firm or corporation, a copy of such specifica-
tions not less than three days before the time fixed
for the receiving of bids,' in lieu of the publication of
notice otherwise required?

"3. In determining whether the cost of the mate-
rial, equipment, goods and supplies exceed five hun-
dred dollars should the cost of each class, as described
in the specifications, be considered separately, or should
the entire cost of all such materials, equipment, goods
and supplies, as described in the specifications, be con-
sidered?

"4. If a contract had been awarded by any unit of
government for the purchase of materials, equipment,
goods or supplies, and such contract had not been
executed by the delivery of the things purchased prior
to the effective date of Chapter 129 of the Acts of
1943, would the purchaser be authorized to accept delivery under such contract, or to comply with the provisions of said act:

"(a) As to the giving of notice, receiving of bids and awarding contract?

"(b) As to the issuance and filing of purchase orders?"

Answering your first question, I beg to advise that it is my opinion that the provisions of Chapter 129 of the Acts of 1943 do not apply to purchases of materials, equipment, goods and supplies to be paid for from the funds of municipally owned public utilities. Section 1 of Chapter 129 expressly provides that: "any person, official, board, * * * authorized and empowered by law * * * to make purchases of material or materials * * * payment for which is to be made from any appropriation of public funds made under the provisions of the budget law, for any unit of the state, county, township, city or town government, shall comply with the requirements of this Act whenever the total amount of any purchase exceeds one hundred dollars ($100)." Municipally owned public utilities are not operated under the provisions of the budget law, and the expenditure of such funds are controlled by the provisions of Burns' R. S. 1933, Section 48-7206. Furthermore, the Budget Law, Burns' R. S. Pocket Supplement, Section 64-1331, reads:

"The several tax levies and rates shall be established by the proper legal officers of any municipal corporation after the formulation and publication by them of a budget on forms prescribed by the state board of accounts showing in detail the money proposed to be expended during the succeeding year, the valuation of all taxable property within the jurisdiction and the rate of taxation which it is proposed to establish, and after a public hearing within the jurisdiction at which any taxpayer shall have a right to be heard thereon. * * *"

The above language clearly and unmistakably evidences an intention by the Legislature to limit the act to the expenditure of money raised solely by taxation, which does not apply
to revenues received from the operation of a public utility. For these reasons, I am of the opinion that the provisions of Chapter 129 do not apply to the purchase of materials, equipment and supplies for municipally owned public utilities.

It is my opinion that the proper answer to your second question is in the affirmative and that if the cost of the materials, equipment, goods and supplies to be purchased does not exceed five hundred dollars ($500) the purchaser may invite bids from not less than three persons, firms or corporations as provided by the statute in lieu of the publication of notice otherwise required.

In answering your third question, I beg to advise that it is my opinion that the proper interpretation to be placed upon the language of the statute is that in determining whether or not the total cost of the material, equipment, goods and supplies to be purchased exceeds five hundred dollars ($500), the total cost of all materials, equipment, goods and supplies in similar classes should be considered. As to what will constitute materials, supplies, equipment and goods of a similar class, must remain a question of fact to be determined in each particular instance.

With reference to your fourth and final question, I beg to advise that it is my opinion that if a contract had already been awarded by any unit of government for the purchase of materials, equipment, goods or supplies prior to the effective date of Chapter 129 of the Acts of 1943, but the articles purchased had not been delivered, the purchaser is still authorized to accept delivery under the previous contract and make payment therefor without complying with the provisions of Chapter 129. It is my opinion that the provisions of Chapter 129 are only applicable to contracts for purchases which are made after the effective date of the Act and that the provisions of the Act should not be construed as having a retroactive effect upon previous purchases or contracts for purchases already awarded.