



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

**UNDER SECRETARY
ATTORNEY GENERAL**

AUSTIN 11, TEXAS

Honorable John R. Shook
Criminal District Attorney
San Antonio, Texas

Dear Sir:

Attention: Honorable Jay Sam Levey

Opinion No. 0-4250

Re: Is it necessary for the commissioners' court to advertise for bids in the sale of hospital bonds to be issued by Bexar County?

We acknowledge receipt of your opinion request of recent date, and quote from your letter as follows:

"The County Judge of Bexar County has requested an opinion concerning several questions relating to the issuance of \$285,000.00 Bexar County Tubercular Hospital Bonds approved by your Department, and we wish to refer the following questions to you:

"1. Is it necessary for the Commissioners' Court to advertise for bids in the sale of hospital bonds to be issued by Bexar County?

"2. Is the Commissioners' Court authorized to require bidders desiring to purchase such hospital bonds to make the affidavit provided for by Article 2367 of the R.C.S. of Texas?

"3. Is the County Judge required to officially sign bonds issued by the Commissioners' Court after having been favorably voted upon by the qualified voters of Bexar County in a bond election, although he may be opposed to the issuance of the bonds or to the method of their contemplated disposition?

Honorable John R. Shook, Page 2

"4. Is the filing of a single bid, joined in by some seven or eight different individuals or firms, a violation of the laws relating to trusts and conspiracies against trade as the same are defined by Articles 1632 and 1934 of the Penal Code and Articles 7426 and 7428 of the R. C. S. of Texas?"

Your first question is answered in the negative. We have been unable to find any statutory requirement for requesting or advertising for bids in the sale of county hospital bonds. The only statutory requirement as to sale price being Article 708, Vernon's Annotated Civil Statutes, which reads as follows:

"Bonds shall never be sold at less than their par value and accumulated interest, exclusive of commissions."

In the absence of specific statutory provision, it is our opinion that there is no requirement that bids be advertised or requested in order for a county to sell county hospital bonds.

In reply to your second question we advise that we know of no reason why the Commissioners' Court could not advertise or request bids in a sale of county hospital bonds, even though it is not required by statute. In our opinion, the Commissioners' Court may impose whatever reasonable requirements it sees fit, which may include the affidavit required by Article 2367, Revised Civil Statutes.

In reply to your third question we advise that Article 724, Revised Civil Statutes, provides that bonds shall be signed by the County Judge and countersigned by the County Clerk and registered by the County Treasurer before delivery. The County Judge, being a member of the Commissioners' Court, is governed by a majority of the court. Once the Commissioners' Court has acted, we believe it becomes the ministerial duty of the County Judge to sign the bonds which are issued, whether or not he favors the issuance of said bonds. *Simpson vs. Williams* R.H.S.D., 153 S.W. (2d) 252; *Orr vs. Marrs*, 47 S.W. (2d) 440.

In reply to your fourth question we advise that the question of whether or not a joint bid violates the Anti-trust Laws of Texas depends largely on the motive of the party joining in the bid. It is impossible to determine from the facts submitted whether or not this particular bid violates the Anti-trust Laws of Texas.

Honorable John R. Shook, Page 3

We call your attention to the case of Daily v. Ellis, 66 S. W. 586, which we believe clearly sets out the law of this State in regard to joint bids.

Trusting that this answers your questions, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Claud O. Boothman
Claud O. Boothman
Assistant

APPROVED JAN 5, 1942
Wm. C. Cullen
ASSISTANT
ATTORNEY GENERAL

COB-s

11
C. O.
BY