



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

August 10, 1953

Hon. Frank R. Nye, Jr.
County Attorney
Starr County
Rio Grande City, Texas

Letter Opinion No. MS-79

Re: Authority of the Commissioners' Court to purchase supplies in amounts costing less than \$150 without competitive bids if no emergency exists.

Dear Mr. Nye:

Your request for an opinion is as follows:

"The County Commissioners' Court of Starr County is desirous of knowing whether they would be acting within the law if they were to purchase cedar posts or road supplies of that nature in amounts of less than \$150.00, when there is an available stock of material on hand and there is no emergency with reference to the use of said material; said purchase being made without advertising for bids."

You have advised us that Starr County has not adopted the Optional County Road Law of 1947, (Article 6716-1, Vernon's Civil Statutes). Therefore, we must look to the provisions of Article 1659, V.C.S. (General Law).

Article 1659, V.C.S., reads, in part, as follows:

"Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, . . . In case of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids." (Emphasis added)

In the case of Wyatt Metal & Boiler Works v. Fannin County, 111 S.W.2d 787 (Tex.Civ.App. 1937, error dism.), where the county had purchased culverts from the plaintiff, the advertisement for bids did not furnish sufficient specifications, the court, in denying the mandamus to compel the county auditor to approve plaintiff's claim, stated that the requirements of Article 1659, V.C.S., had not been complied with and plaintiff was relegated to a suit against the county upon an implied contract for the reasonable value of the benefit which the county received from the use of the culverts.

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Article 1659 authorizes the commissioners' court to make purchases not exceeding \$150 in cases of emergency. Your request states that an emergency does not exist. Therefore, the commissioners' court has no authority to purchase "cedar posts or road supplies of that nature" in amounts of less than \$150 without advertising for competitive bids where no emergency exists.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
William M. King
Assistant

WMK:am/cm