

CITY COUNCIL MEETING

AWARD - CONTRACT
FOR LEGAL
ADVERTISING FOR
CITY OF LODI
ACTION DEFERRED

Mayor Pro Tempore McCarty asked to abstain from discussion and voting on the following item, because of a possible conflict of interest.

The bids which had been received for the contract for legal advertising for the City of Lodi as follows were presented for Council's perusal:

Lodi Life and Times

- a) Price per column inch (1 inch x newspaper's standard column width) for first insertion of each advertisement \$1.50
- b) Price per column inch (1 inch x newspaper's standard column width) for each subsequent insertion of an advertisement \$1.45
- c) Price per copy of additional proofs after first three
No charge

Paid circulation of bidding newspaper
3,700

Lodi News Sentinel

- a) Price per column inch (1 inch x newspaper's standard column width) for first insertion of each advertisement \$3.50
- b) Price per column inch (1 inch x newspaper's standard column width) for each subsequent insertion of an advertisement \$2.80
- c) Price per copy of additional proofs after first three
No listing

Paid circulation of bidding newspaper
13,713

Council discussion followed with questions being directed to the City Attorney and City Clerk. On motion of Councilman Murphy, Pinkerton second, Council deferred action on this matter until the regular Council meeting of January 21, 1981, by the following vote:

Ayes: Councilmen - Murphy, Pinkerton, and
Katnich

Noes: Councilmen - None

Absent: Councilmen - Hughes

Abstain: Councilmen - McCarty

LODI NEWS-SENTINEL

Phone (209) 369-2761; from Stockton 464-1200

125 North Church Street

P.O. Box 760

Lodi, California

Fred Weybret
Publisher

January 5, 1980

Lodi City Council
City Hall
Lodi, Calif. 95240

Gentlemen:

Enclosed please find our bid for publishing official public notice advertising for the City of Lodi for 1981.

Attached to the bid form, you will find two additional pieces of information which I believe will be of interest to you in making your determination of the successful bidder.

Public Notice advertising is just that----notice to the public of important city council actions----calls for bids, zoning changes, ordinance changes and other items. To be effective in its purpose, public notices should receive the widest possible circulation among the interested citizens of the community. Your call for bids asks that the bidders submit their respective paid circulation figure, and I assume that you will give this figure due consideration in your deliberations.

In this regard, I attach a copy of an Attorney General's opinion which addresses this subject. It points out that a City Council or other public agency when awarding bids for Public Notice publication not only may, but should give consideration to meeting the intent of the publication law--which is to give the widest possible circulation to the notices being published.

I have underlined several pertinent paragraphs in the attached opinion which go directly to this point.

I also note that your call for bids asks us to state a price per column inch for legal advertising, based on the newspapers standard column width. The actual cost to the city for publication will be determined by the set depth of a given notice, which is a direct function of the column width, the point size and style of the type used and the leading (space between lines). It is unlikely that any two newspapers will achieve exactly the same set depth for a given notice because of the variables.

To illustrate this point, I have attached a copy of the notice which the city caused to be published in the Lodi News-Sentinel and Lodi Life and Times calling for this bid. You will quickly note the difference in set depth, even though the notices are identical.

To accurately compare the cost to the city for the publication of a particular notice, the cost per column inch must be multiplied

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by the set depth. Price per column inch alone is not a true cost figure.

The Attorney General's opinion also notes that consideration should also be given to the "other services of competing bidders". The six-day per week publication schedule of the Lodi News-Sentinel is a definite advantage to the city, allowing greater flexibility in publication schedules and enabling the city to better meet certain publication deadline requirements. The News-Sentinel and City Hall personnel have long worked together in meeting these publication schedules, even when they meant accepting copy long after the established deadlines.

We value our long association with the City of Lodi, and stand ready to continue to co-operate at all times to provide effective and timely public notice advertising in the future.

Sincerely,


Fred Weybret
Publisher

FW/sm

Enclosure

BID TO THE
CITY OF LODI, CALIFORNIA
PURCHASING DIVISION

BIDS MUST BE RECEIVED BY THE
CITY CLERK, 221 W. Pine Street
Lodi, California
Prior To 11:00 a.m., Tuesday,

January 6, 1981

FOR: OFFICIAL ADVERTISING

NAME OF BIDDER Lodi News-Sentinel Telephone 369-2761

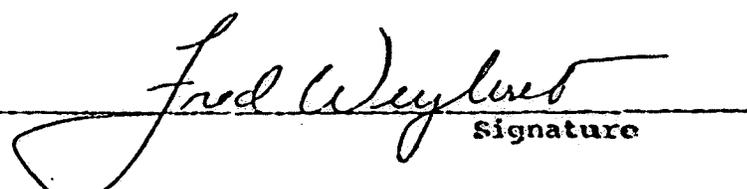
BUSINESS ADDRESS 125 N. Church Street--P.O.Box 760, Lodi, Ca 95241

To the City of Lodi:

The undersigned, as bidder, certifies that the only persons or parties interested in this bid as principals are those named herein as bidder; that this bid is made without collusion with any other person, firm, or corporation, that in submitting this bid he has examined the "General Conditions and Instructions to Bidders" and the specifications; that he proposes and agrees if this bid is accepted, he will execute and fully perform the contract for which bids are called; that he will perform all the work and/or furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that he will take in full payment therefor, the prices set forth in the attached schedule.

Fred Weybret, Publisher

Typed or Printed Name and Title



Signature

FOR CITY USE ONLY

Bid was opened on above date and at prescribed place.

Bid bond required (x)No () Yes Amount _____

Alice M. Reimche
City Clerk

Approved as to form and legality

Ronald M. Stein
City Attorney

PUBLIC NOTICE

NOTICE INVITING BIDS FOR THE PUBLICATION OF THE OFFICIAL ADVERTISING BY THE CITY OF LODI IN ACCORDANCE WITH STATE OF CALIFORNIA GOVERNMENT CODE SECTION 6060 et seq.

The City of Lodi hereby invites sealed proposals for the publication of the official advertising by the City of Lodi in accordance with State of California Government Code Section 6060 et seq.

Each bid shall be in accordance with specifications on file in the office of the City Clerk, City Hall, City of Lodi, California 95240 where copies of said specifications may be inspected or obtained. No bid will be considered unless it is submitted on a proposal form furnished by the City of Lodi.

Said sealed proposals shall be delivered to the City Clerk of the City of Lodi at the City Hall, 221 West Pine Street, Lodi, California 95240 at or before 11:00 a.m., Tuesday, January 6, 1981 and will be publicly opened on said day and hour in the Council Chambers in the City Hall, Lodi, California.

The City of Lodi reserves the right to reject any or all bids, to waive any informality or irregularity in any bid, to accept other than the lowest bid, or not to award the bid.

Reference is hereby made to said specifications for further details.

s: ALICE M. REIMCHE
City Clerk
City of Lodi

Dec. 21, 28 1980



5½ col. inches

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CITY OF LODI
ALICE M. REIMCHE
CITY CLERK

Dec. 20, 27, 1980

— 1525

3½ col. inches

be done which will be of financial aid to such religious groups or institutions, as such, in furtherance of their religious programs, or which will in any way assist such group in the teachings of their particular religion. It does not mean that members of such groups are to be barred from those privileges available to others where the activity has no connection with religion and does not result in financial aid to the religious organization or school.

In this case, playing football does not, of course, involve the teaching of any religious doctrine. Moreover, in this case no financial assistance is granted to the parochial school, since a charge will be made for the use by it of the football stadium. Therefore, no gift of public funds to private persons is involved, as prohibited by section 31 of Article IV of the California Constitution, nor is there a violation of section 30 of Article IV of the California Constitution. We believe, therefore, that the California Constitution does not prohibit the proposed use.

In conclusion, it should be observed that if the California Constitution prohibits the proposed use of the stadium, then it would also prohibit the use of municipal stadiums by colleges maintained by religious organizations. The latter use for football games is, of course, quite common. Likewise, the use of municipal buildings by parochial organizations has been accepted.

Opinion No. 48-168—August 31, 1948

SUBJECT: COUNTY ADVERTISING: Questions Answered Respecting Duties of County Purchasing Agent Concerning Handling of County Advertising.

Requested by: DISTRICT ATTORNEY, Imperial County.

**Opinion by: FRED N. HOWSER, Attorney General
John F. Hassler, Deputy.**

The District Attorney of Imperial County has requested the opinion of this office on the following questions:

1. In a county employing a purchasing agent, is it one of the duties of the purchasing agent to fix the price for county advertising, either annually or otherwise?
2. If it is one of the duties of such purchasing agent, is there any established procedure he can follow in fixing the price?
3. If there are several newspapers of general circulation published in the county, both daily and weekly, with varying amounts of circulation, is the purchasing agent required to consider the amount of circulation of a newspaper in determining the price he establishes?
4. Where the purchasing agent requests and receives bids from several newspapers of general circulation published in the county, should he accept the lowest bid as the price to be paid for county advertising without reference to the amount of the circulation?

Our conclusions are as follows:

1. The purchasing agent may but need not fix the price for county advertising, which price may but need not be fixed annually.
2. There is no established procedure for the county purchasing agent to follow in fixing the price for county advertising, and resort may be had to any proper means or information.
3. A purchasing agent is required to consider the amount of circulation but is not guided solely by his finding in this connection.
4. The purchasing agent is not required to accept the lowest bid for county advertising, without reference to circulation, rather he should consider circulation and other services of competing though higher bidders and otherwise act according to his own business judgment and decision.

ANALYSIS

Prior to incorporation in the Government Code, Section 4041.13 of the Political Code provided in part as follows:

"... Whenever a board of supervisors shall employ a purchasing agent as herein provided for it shall not be necessary for them to advertise for bids for furnishing county supplies as required in section 4048 of this code, with the exception of advertising. ..."

Former Section 4048 of the Political Code provided in part as follows:

"... except in counties employing a purchasing agent, the board shall annually fix the price at which the county shall be supplied with job printing and blank books, . . . and also the price of all county advertising: . . ."

Respecting these sections, we held in Ops. Atty. Gen. No. 8011 that part legislative intent resolved the apparent repugnancy and that there was no requirement for the advertising for bids for county advertising. Further, that boards of supervisors of counties wherein no purchasing agent was employed were required to fix the rate of advertising and that there was no requirement that board fix such rate in counties employing purchasing agents. The conclusion respecting counties employing purchasing agents was again expressed, to like effect in Ops. Atty. Gen. NS-941. The provisions of the Political Code, respecting rates for counties wherein no purchasing agent was employed, undoubtedly required the Board to fix the rate for county advertising on an annual basis. No requirement of the Political Code enjoined the purchasing agent of a county to annually or otherwise fix the rates for county advertising. We are of the opinion that provision that required annual fixing of advertising rates by the boards of supervisors of counties wherein no purchasing agent was employed was not subject to the inference that a purchasing agent was required to annually fix such rates in counties wherein such officer was employed.

In 1947 the Political Code sections were substantially incorporated in Government Code. Thus, the pertinent part of Political Code Section 4048 became Section 25484 of the Government Code, and now reads as follows:

"In any county which does not employ a purchasing agent, the board shall annually fix the price at which the county will be supplied with job printing and blank books, . . . The board shall also fix the price of all county advertising."

The pertinent part of Section 4041.13 of the Political Code became Section 502 of the Government, which section now reads as follows:

"Whenever the board of supervisors employs a purchasing agent it shall not be necessary for it to advertise for bids for furnishing county supplies as required in Section 25480, with the exception of advertising."

In Section 2 of the Government Code the rule for construction is stated as follows:

"The provisions of this code, in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments."

We are of the opinion that the provisions now appearing in the Government Code mean no more and no less than, and are to be construed the same as, the former provisions in the Political Code.

Accordingly, in reply to your first question, we believe that the purchasing agent may fix the prices for county advertising and that such price may, but need not, be fixed annually. In this connection, we are of the opinion that the purchasing agent may, in his sound discretion, fix the price or may otherwise negotiate for the purchase of county advertising, as need and circumstances require, and in a manner consistent with his general powers and duties.

Your second question is predicated on the supposition that a purchasing agent is required to fix the price. In our opinion, the matter of price fixing is discretionary with the purchasing officer. In such cases, however, we agree with your observation that he may use any proper means or information at his disposal since no procedure is prescribed by the Code. We also concur in your observation that the purchasing agent may request quotations from various newspapers of general circulation published within the county and may establish the price according to his findings. In this connection, we believe that the purchasing agent may lawfully refer to recognized price or cost indices and adjust the price from time to time if, in his judgment, such action is warranted.

Answering your third question, we are of the opinion that a purchasing agent is required to consider the amount of circulation of the newspaper when determining the price to be established or when letting a contract for purchase of advertising services. The purpose of public notice through advertisement in newspapers of general circulation is most obvious. The procedure contemplates communication of intelligence to the public generally as well as to persons particularly interested in the subject matter. The general public is given notice, among other reasons, in order that it may be cognizant of the affairs of business charged to the administration of public officials. Individuals particularly interested in the subject matter are notified in order that they may supply services or materials to the public corpora-

tion or purchase materials and supplies from the corporation. It is, of course, in the interest of the public corporation that its needs be communicated as extensively as circumstances may require and cost will permit.

A newspaper of great circulation will presumably carry notice to a larger segment of the public and a greater number of prospective suppliers and persons interested in the content of the notice. This, however, is not necessarily so, and we are of the opinion that mere numerical superiority in the matter of circulation does not commend one newspaper to the exclusion of others. The determination of this question is largely one for the purchasing agent charged with procuring advertising with a view of whether or not reasonable notice may be given. We believe it would be arbitrary and tantamount to an abuse of discretion to fail to consider the circulation of a newspaper. At the same time we believe that the question of circulation alone cannot be determinative. It is likely that a standard might be set by the purchasing agent in his finding that a particular newspaper has a substantial and reasonable coverage for the purpose contemplated by the advertisement, but less than another newspaper published within the county. We believe that the officer should consider all services offered by the several newspapers and that his determination in selecting a particular newspaper is proper in the event substantial as distinguished from mere token notice is given.

In the event the purchasing agent fixes a price for advertising in newspapers of stated circulation, and such price is arbitrary and unfair with respect to advertisements in newspapers of greater circulation, it may be that the fixing of such price is an abuse of discretion with respect to the placement of advertisements which in their nature require greater dissemination than can be had for the established price. Whether or not the proposed advertisement requires greater circulation is a matter, at least in the first instance, for the purchasing agent to determine according to his own good business judgment.

The answer to your fourth question is contained in part in our reply to your third question. We can imagine situations where acceptance of the lowest bid without regard to other services offered by the successful bidder might be an abuse of discretion and a fraud upon the county. We think it not only proper but prudent to consider the matter of circulation, together with the other services offered by competing, though higher, bidders. Of necessity, the matter must rest within the sound discretion of the purchasing agent in the performance of his duty. Thus, in *Cyr v. White*, 83 A.C.A. 43, the court stated as follows (p. 47):

" . . . In a given city, there may be two newspapers of general circulation, one a daily with a tremendous circulation, the other a weekly with a very small circulation. While the latter might be able to publish legal notices much cheaper than the former, it would be far more in the interests of the public that the city's legal notices be published in the paper of larger circulation. At least, in awarding a contract, the city council should be permitted to weigh that consideration against the matter of cost, and unless the council abuses its discretion, its determination should stand."