

Opinion No. 47

PUBLIC CONTRACTS; Bidding, bidders must have valid public contractors license—PUBLIC CONTRACTS; Awards of; contracts must be awarded only to holders of valid public contractors licenses—CITIES AND TOWNS; Contracts of; may be awarded only to holders of valid public contractors licenses—Sections 84-3505 and 84-3507, Revised Codes of Montana, 1947

Held: The provisions of Section 84-3507, R.C.M., 1947, requiring that all bidders upon public contract projects have valid Montana public contractors licenses and providing that no public contract may be awarded to a bidder who does not have at the time of the bid a valid license, are mandatory and prohibitory and may not be waived.

December 15, 1959

Mr. R. E. Towle
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

You have requested my opinion upon the following question: "May the provisions of Section 84-3507, Revised Codes of Montana, 1947, requiring licensing by the State of Montana of all bidders upon any public contract project, be waived?"

The facts giving rise to your request are as follows:

A bidder upon a sewage lagoon project for a Montana city did not have a Montana public contractors license as required by Section 84-3501 through 84-3512, R.C.M., 1947. His bid was disallowed for failure to show the number and class of the license as required by Section 84-3507, R.C.M., 1947. The bid accepted was higher than the bid of this particular bidder.

Section 84-3507, R.C.M., 1947, provides:

"Bids to show bidder is licensed and class of bid. All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, **and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided.**" (Emphasis supplied.)

The only apparent exception to the requirements of Section 84-3507, *supra*, is contained in the last paragraph of Section 84-3505, R.C.M., 1947, which provides:

"Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars (\$1,000.00), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved."

This exception clearly applies only to contracts let by the State Highway Commission and has no application to the case at hand.

Therefore, only Section 84-3507 need be considered.

The language of Section 84-3507 is clear, unequivocal and mandatory and it provides explicitly that: ". . . no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided." When the language of a statute is clear and unequivocal, there is no need for rules of statutory construction. The statute construes itself. (*Cruse vs. Fischl*, 55 Mont. 258, 175 Pac. 878; *Great Northern vs. Public Service Commission*, 88 Mont. 180, 293 Pac. 294.)

The intention of the Legislature could not have been more clearly expressed than it is in Section 84-3507. That Section means and was intended to mean that no public body may award a contract to any bidder who does not at the time of the submission of his bid have a valid Montana public contractors license of the proper class.

It is, therefore, my opinion that the provisions of Section 84-3507, R.C.M., 1947, requiring that all bidders upon public contract projects have valid Montana public contractors licenses and providing that no

public contract may be awarded to a bidder who does not have at the time of the bid a valid license, are mandatory and prohibitory and may not be waived.

Very truly yours,
FORREST H. ANDERSON
Attorney General