



COUNSELOR'S OFFICE

115 N. 4th Street, 3rd Floor
Manhattan, Kansas 66502
Phone: 785-565-6844
Fax: 785-565-6847
Email: adillon@rileycountyks.gov

February 3, 2015

Chairman Steve Huebert
Committee on Local Government
State Capitol, Room 281-N
Topeka, KS 66612

Re: H.B. 2164

Dear Chairman Huebert and Members of the Committee:

My client, the Board of Riley County Commissioners, unanimously supports H.B. 2164, but asks for an amendment to the competitive bid threshold, increasing it from \$15,000 to \$25,000.

The current law, K.S.A. 19-27a19 (Attachment "A") requires competitive bids whenever construction in a sewer benefit district will exceed \$1,000. That current law also requires that those competitive bids must be let as described within K.S.A. 19-214 (Attachment "B"). Attorney General Opinion 2009-11 (Attachment "C") interprets "construction" as that term is used within K.S.A. 19-214 to include "repair."

Because the text of K.S.A. 19-27a19 refers to K.S.A. 19-214 to set out the format of competitive bids, the two statutes are linked. I believe any court facing the question would therefore likely conclude that terms used in both statutes should be defined consistently. The settled rules of statutory construction suggest to me that the term "construction" would be found by a court to mean the same thing in those two linked statutes. Since K.S.A. 19-214's "construction" has been found by the A.G. to include "repair," in my opinion a court would be inclined to hold that K.S.A. 19-27a19's "construction" likewise includes "repair."

In my opinion, the current law requires competitive bidding whenever sewer benefit district repairs exceed \$1,000. My client believes that amount must be increased, and should be raised to \$25,000.

Thank you for allowing me to express my client's support for H.B. 2164, with the amendment described above.

Sincerely,

Clancy Holeman
Riley County Counselor

cc: Board of Riley County Commissioners
Leon Hobson, Director of Public Works

House Status: [Adjourned until Monday, February 02, 2015 at 11:00 a.m.](#)

Senate Status: [Adjourned until Monday, February 02, 2015 at 02:30 p.m.](#)

2014 Statute

[Prev](#)[Article 27a. - SEWER DISTRICTS](#)[Next](#)

19-27a19. Contracts; public bidding required, when. All contracts for any construction of all or part of a sewer system, the cost of which shall exceed \$1,000, shall be awarded on a public letting to the lowest responsible bidder and in the manner provided by K.S.A. 19-214, 19-215 and 19-216, and amendments thereto.

History: L. 1983, ch. 99, § 20; July 1.

[Prev](#)[Article 27a. - SEWER DISTRICTS](#)[Next](#)

2015. Powered by KLISS. Rendered: 2015-01-30T15:46:59. Head Rev No: 60878

ATTACHMENT A

House Status: [Adjourned until Monday, February 02, 2015 at 11:00 a.m.](#)

Senate Status: [Adjourned until Monday, February 02, 2015 at 02:30 p.m.](#)

2014 Statute

[Prev](#)[Article 2. - COUNTY COMMISSIONERS](#)[Next](#)

19-214. Awarding of certain contracts; public lettings; bond; exemptions. (a) Except as provided in subsection (b), in K.S.A. 19-216a, and amendments thereto, all contracts for the expenditure of county moneys for the construction of any courthouse, jail or other county building, or the construction of any bridge, highway, road, dam, turnpike or related structures or stand-alone parking lots in excess of \$25,000, shall be awarded, on a public letting, to the lowest and best bid. The person, firm or corporation to whom the contract may be awarded shall give and file with the board of county commissioners a good and sufficient surety bond by a surety company authorized to do business in the state of Kansas, to be approved by the county attorney or county counselor, in the amount of the contract, and conditioned for the faithful performance of the contract.

(b) The provisions of subsection (a) shall not apply: (1) To the expenditure of county funds for professional services; (2) to the provisions of K.S.A. 68-521, and amendments thereto; (3) to the purchase of contracts of insurance; or (4) to the repair of any courthouse, jail or other county building or the repair or replacement of any such building's equipment when an emergency based upon public health or safety is declared by the board of county commissioners. Such emergency shall be defined as an occurrence of severe damage to a building or its equipment resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, explosion, riot, terrorism or hostile military or paramilitary action, or events of similar nature or character. Such damage must be so severe it prevents the building or equipment from being used for its intended function. Construction of a replacement building remains subject to the provisions of subsection (a).

History: G.S. 1868, ch. 25, § 21; R.S. 1923, 19-214; L. 1961, ch. 128, § 1; L. 1980, ch. 86, § 1; L. 1981, ch. 113, § 1; L. 1994, ch. 119, § 1; L. 2008, ch. 148, § 7; L. 2011, ch. 101, § 13; June 2.

[Prev](#)[Article 2. - COUNTY COMMISSIONERS](#)[Next](#)

2015. Powered by KLISS. Rendered: 2015-01-30T15:47:32. Head Rev No: 60878

ATTACHMENT B

Kan. Atty. Gen. Op. No. 2009-11, 2009 WL 1200383 (Kan.A.G.)

Office of the Attorney General
State of Kansas

Opinion No. 2009-11

April 30, 2009

Re: Counties and County Officers—County Commissioners—Awarding of Certain Contracts; Public Lettings; County Alternative Project Delivery Building Construction Procurement; Definitions; Building Construction Synopsis: K.S.A. 2008 Supp. 19-214 which requires public bidding for contracts for the construction of designated county structures in excess of \$25,000 includes repairs to existing structures. Cited herein: K.S.A. 2008 Supp. 19-214; 19-216b; 19-216c; 19-216d; 75-37,141

The Honorable Mike Petersen
State Senator
28th District
State Capitol, Room 242-E
Topeka, Kansas 66612

The Honorable Roger Reitz
State Senator
22nd District
State Capitol, Room 261-E
Topeka, Kansas 66612

Dear Senators Petersen and Reitz:

As Senators for the 28th and 22nd Districts, respectively, you inquire whether, in light of recent legislation, a statute which requires public bidding for the construction of certain county structures in excess of \$25,000 includes repairs to those same structures. [FN1]

K.S.A. 2008 Supp. 19-214 provides, in part:

[A]ll contracts for the expenditure of county moneys for the *construction* of any courthouse, jail or other county building, or the construction of any bridge, highway, road, dam ... in excess of \$25,000 shall be awarded, on a public letting, to the lowest and best bid. [FN2]

K.S.A. 19-214, enacted in 1868, has remained essentially unchanged. Although minor adjustments have been made through the years, the underlying principle has remained the same, expenditures for county structures must be openly bid and awarded. While there are no appellate court decisions addressing whether “construction” includes repairs to existing structures, testimony offered during the 2008 legislative hearings authorizing counties to utilize alternatives to the traditional design-bid-build process affirmed the proposition that when public funds are expended on county structures, including repairs, the process should be conducted openly. [FN3]

This 2008 legislation - the County Alternative Project Delivery Building Construction Procurement Act (Act) - provides, in part:

[T]he board of county commissioners is ... authorized to institute an alternative project delivery program whereby construction management at-risk or building design-build procurement processes may be utilized on public projects pursuant to the act. This authorization ... shall be for the sole and exclusive use of planning ... designing, building, equipping, altering, *repairing*, improving or demolishing any structure ... but shall not include highways, roads, bridges, dams or related structures [FN4]

While some counties have interpreted K.S.A. 19-214 to include repairs in excess of the statutory amount, your question is whether the Act now resolves the issue because of the circumstances of its enactment. [FN5]

*2 The Act was introduced in the 2008 legislative session as Senate Bill No. 485 (SB 485) It was modeled after a similar procedure for state construction projects. [FN6] As initially introduced, the Act contained a provision exempting it from the requirements of K.S.A. 19-214. [FN7]

Coincidentally, revisions to K.S.A. 19-214 were being considered during the same legislative session in Senate Bill No. 594 (SB 594). That bill proposed the dollar amount threshold be increased from \$10,000 to \$25,000 for bidding. The proposed changes did not address any alternative construction project methods as envisioned in SB 485 or provide any definitions for the existing language.

Subsequently, SB 485 and 594 were merged in the Senate Ways and Means Committee. [FN8] The section of SB 485 that excepted the alternative construction process from K.S.A. 19-214 was deleted and the proposed amendments to K.S.A. 19-214 were inserted in its place.

The question you raise concerns the result of this merger. Briefly stated, did the phrase “construction services” as defined in the Act extend to the term “construction” as used in K.S.A. 19-214? The Act defines “Construction services” as “the process of planning, acquiring, building, equipping, altering, *repairing*, improving, or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property, excluding highways, road, bridges, dams or related structures, or stand-alone parking lots.”[FN9]

One of the amendments to K.S.A. 19-214 in the 2008 session was to specifically add language to require the bidding process to include those types of projects that were not eligible for the alternative construction methods. The new language of K.S.A. 2008 Supp. 19-214 requires public bidding for: “all contracts for the expenditure of county money for the construction of any courthouse, jail or other county building, or the construction of any bridge, *highway, road, dam, turnpike or stand-alone parking lots....*” [FN10] This addition to K.S.A. 19-214 provides an indication that the legislature envisioned these bills as establishing a more comprehensive policy for all types of county construction projects.

When analyzing the language of a statute the Kansas Supreme Court has established the following rules:

The fundamental rule of statutory construction is that the intent of the legislature governs, if that intent can be determined. The legislature is presumed to have expressed its intent through the language in the statutory scheme. When a statute is plain and unambiguous, the court must give effect to the legislative intent as it was expressed rather than determine what the law should or should not be. Courts, however, are not limited to examining the language of the statute alone but may also consider the causes that impel the statute's adoption, the state's objective, the historical background, and the effect of the statute under various constructions. In addition to considering the language and circumstance surrounding the enactment of the statute, this court must consider the various provisions of an act together with a view of reconciling and harmoniz-

ing the provisions if possible. [FN11]

*3 The Court has also stated that “legislative intent is to be determined from a general consideration of the entire act.” [FN12] Additionally, when examining the use of specific terms, the Kansas Supreme Court has held, “[o]rdinarily, when determining legislative intent, identical words or terms used in different statutes on a specific subject are interpreted to have the same meaning absent anything in the context to suggest that a different meaning was intended.” [FN13]

Applying these rules of statutory construction, “construction” should be interpreted consistently throughout the enactment as including both original construction and repairs.

This conclusion is supported by the fact that the legislature worked both bills together in what appeared to be an effort to develop a comprehensive approach to county construction projects. This effort resulted in the eventual merger of the bills into one enactment. [FN14]

Therefore, K.S.A. 2008 Supp. 19-214 includes both original construction and repairs to the county structures identified therein where the cost exceeds \$25,000.

Sincerely,
Steve Six
Attorney General

Michael J. Smith
Assistant Attorney General

[FN1]. K.S.A. 2008 Supp. 19-214.

[FN2]. Emphasis added.

[FN3]. *Minutes*, Senate Ways and Means Committee, February 12, 2008, attachment 15, written testimony of Randall Allen, Executive Director of the Kansas Association of Counties. The purpose of public bidding laws is “to guard against favoritism, improvidence and corruption.” *Interior Contractors, Inc. v. Board of Trustees of Newman County Memorial Hospital*, 185 F.Supp.2d 1216 (D.Kan. 2002) (commenting on K.S.A. 13-1017, the statute that requires bidding for cities of the first class).

[FN4]. K.S.A. 2008 Supp. 19-216d. Emphasis added.

[FN5]. Attorney General Opinion No. 81-65 considered the notification requirement of K.S.A. 19-215 and 19-216 for bidding projects that fall within the bidding requirement of K.S.A. 19-214. The project discussed in the opinion was the interior renovation of the county courthouse, not new construction.

[FN6]. *Minutes*, Senate Committee on Ways and Means, February 12, 2008, attachment 8, citing K.S.A. 2008 Supp. 75-37,141 *et seq.*

[FN7]. *Id.* at attachment 8-2, citing Section 7 of SB 485.

[FN8]. *Minutes*, Senate Ways and Means Committee, March 6, 2008.

[FN9]. K.S.A. 2008 Supp. 19-216c(i). Emphasis added.

[FN10]. K.S.A. 2008 Supp. 19-214(a) unless exempt pursuant to subsection (b). Emphasis added.

[FN11]. *Cole v. Mayans*, 276 Kan. 866, 874 (2003) internal citations omitted.

[FN12]. *Board of Lincoln County Comm'rs v. Nielander*, 275 Kan. 257, 265 (2003).

[FN13]. *State v. Bank of America*, 272 Kan. 182, 188 (2001) citing *T-Bone Beeders, Inc. v. Martin*, 236 Kan. 641, 648 (1995).

[FN14]. 2008 Substitute for Senate Bill 485.

Kan. Atty. Gen. Op. No. 2009-11, 2009 WL 1200383 (Kan.A.G.)

END OF DOCUMENT