

No. 1978-228

AN ACT

HB 2342

Amending the act of May 1, 1933 (P.L.103, No.69), entitled "An act concerning townships of the second class; and amending, revising, consolidating, and changing the law relating thereto," further regulating contracts as to advertising requirements.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 802 and 802.1, act of May 1, 1933 (P.L.103, No.69), known as "The Second Class Township Code," reenacted and amended July 10, 1947 (P.L.1481, No.567), and amended November 23, 1976 (P.L.1137, No.244), are amended to read:

Section 802. Letting Contracts.—(a) Each township shall have the power to make, to authorize, and to ratify, expenditures for lawful purposes from funds available therefor, by borrowing within legal limitations: Provided, That all contracts or purchases in excess of **[two thousand dollars] two thousand five hundred dollars**, except those hereinafter mentioned, shall not be made except with and from the lowest responsible bidder, after due notice in one newspaper of general circulation, published or circulating in the county in which the township is situated, at least three times, at intervals of not less than three days where daily newspapers of general circulation are employed for such publication, or in case weekly newspapers are employed, then the notice shall be published once a week for two successive weeks. The first advertisement shall be published not less than ten days prior to the date fixed for the opening of bids.

(b) The amount of the contract shall in all cases, whether of straight sale price, conditional sale, bailment lease, or otherwise, be the entire amount which the township pays to the successful bidder or his assigns in order to obtain the services or property, or both, and shall not be construed to mean only the amount which is paid to acquire title or to receive any other particular benefit or benefits of the whole bargain.

(c) The acceptance of bids shall only be made by public announcement at the meeting at which bids are received, or at a subsequent meeting, the time and place of which shall be publicly announced when bids are received. If for any reason one or both of the above meetings shall not be held, the same business may be transacted at subsequent meetings: Provided, That at least five days' notice thereof shall be published in the newspaper aforesaid.

(d) The successful bidder, when advertising is required herein, shall be required to furnish a bond with suitable reasonable requirements,

guaranteeing performance of the contract, with sufficient surety in the amount of fifty per centum (50%) of the amount of the contract within twenty days after the contract has been awarded, unless the supervisors shall prescribe a shorter period not less than ten days, and upon failure to furnish such bond within such time, the previous award shall be void. Delivery, accomplishment and guarantees may be required in all cases of expenditures, including the exceptions herein.

(e) The contracts or purchases made by any supervisors involving an expenditure of over **[two thousand dollars]** ~~two thousand five hundred dollars~~, which shall not require advertising or bidding as hereinbefore provided, are as follows:

(1) Those made for maintenance, repairs or replacements for water, electric light and other public works of the township, provided they do not constitute new additions, extensions or enlargements of existing facilities and equipment, but a bond may be required by the supervisors as in other cases of work done.

(2) Those made for improvements, repairs or maintenance of any kind, made or provided by any township, through its own employes: Provided, however, That all materials used for road improvement, maintenance and/or construction in excess of **[two thousand dollars]** ~~two thousand five hundred dollars~~ be subject to the advertising requirements contained herein.

(3) Those where particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles, or parts thereof, are desired by the supervisors, which are patented and manufactured products.

(4) Those involving any policies of insurance or surety company bonds, those made for public utility service under tariffs on file with the Pennsylvania Public Utility Commission, those made with another political subdivision, county, the Commonwealth of Pennsylvania or the Federal Government, or any agency of the Commonwealth or Federal Government, or any municipal authority, including the sale, leasing or loan of any supplies or materials by the Commonwealth, or the Federal Government, or their agencies, but the price thereof, or the expenditure therefor, shall not be in excess of those fixed by the Commonwealth, the Federal Government or their agencies.

(5) Those involving personal or professional services.

(f) Except as herein provided, no township official, either elected or appointed, who knows, or who by the exercise of reasonable diligence, could know, shall be interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any supplies or materials for the use of the township, or for any work to be done for such township involving the expenditure by the township of more than three hundred dollars (\$300) in any year, but this limitation shall not apply to cases where such officer, or appointee of the township, is an employe of the person, firm or corporation to which the money is to be paid in a capacity

with no possible influence on the transaction, and in which he cannot be possibly benefited thereby, either financially or otherwise: Provided, however, That in the case of a supervisor, if he knows that he is within the exception just mentioned, he shall so inform the supervisors and shall refrain from voting on the expenditures, or any ordinance relating thereto, and shall in no manner participate therein: Provided, further, That any such official or appointee who shall knowingly violate this provision shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the township, ouster from office, and shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500): Provided, That in the case of the purchase of material for the construction, reconstruction, maintenance and improvement of roads and bridges, the contract, which shall be in writing, and shall be let only on standard specifications of the Department of Transportation, and materials so purchased shall only be used in accordance with specifications of said department.

(g) Every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (No.3), known as the "Steel Products Procurement Act."

Section 802.1. Evasion of Advertising Requirements.—No supervisor or supervisors shall evade the provisions of section eight hundred two as to advertising for bids, by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under **[two thousand dollars] two thousand five hundred dollars** upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than **[two thousand dollars] two thousand five hundred dollars**. This provision is intended to make unlawful the evading of advertising requirements by making a series of purchases or contracts each for less than the advertising requirement price, or by making several simultaneous purchases or contracts, each below said price, when, in either case, the transactions involved should have been made as one transaction for one price. Any supervisors who so vote in violation of this provision, and who know that the transaction upon which they so vote is or ought to be part of a larger transaction and that it is being divided in order to evade the requirements as to advertising for bids, shall be jointly and severally subject to surcharge for ten per centum of the full amount of the contract or purchase. Whenever it shall appear that a supervisor may have voted in violation of this section, but the purchase or contract on which he so voted was not approved by the board of supervisors, this section shall be inapplicable.

Section 2. This act shall take effect in 60 days.

APPROVED—The 4th day of October, A. D. 1978.

MILTON J. SHAPP