

## No. 34

## AN ACT

Relating to and regulating the contracts of incorporated towns and providing penalties.

**TOWNS.**

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

Section 1. Power to Make Contracts.—Each incorporated town may make contracts for lawful purposes and for the purposes of carrying into execution the provisions of this and other laws of the Commonwealth.

Section 2. Regulation of Contracts.—(a) All contracts or purchases of incorporated towns in excess of seven hundred and fifty 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 circulated in the county in which the town is situated at least three times at intervals of not less than three days where daily newspapers of general circulation are available for such publication, and in case of weekly newspapers 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. 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 town 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.

(b) 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 any subsequent meeting if at least five days notice thereof shall be published in the newspaper aforesaid.

(c) The successful bidder, when advertising is required herein, shall be required to furnish a bond, with suitable reasonable requirements guaranteeing the work to be done with sufficient surety in the amount of fifty per centum of the amount of the liability under the contract, within twenty days after the contract has been awarded, unless council shall prescribe a shorter period of not less than ten days, and upon failure to furnish such bond within such time the previous award shall be

void. Deliveries, accomplishment and guarantees may be required in all cases of expenditures, including the exceptions herein.

(d) The contracts or purchases made by council involving an expenditure of over seven hundred and fifty dollars which shall not require advertising or bidding as hereinbefore provided are as follows:

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

(2) Those made for improvements, repairs and maintenance of any kind other than construction materials used in a street improvement made or provided by any incorporated town through its own employees.

(3) Those where particular types, models or pieces of new equipment, articles, apparatus, appliances, vehicles or parts thereof are desired by council, which are patented and manufactured or copy-righted 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, or a county, the Commonwealth of Pennsylvania, the Federal Government, any agency of the Commonwealth or the Federal Government, or any municipal authority, including the sale, leasing or loan of any supplies or material by the Commonwealth or the Federal Government or their agencies. But the price thereof shall not be in excess of that fixed by the Commonwealth, the Federal Government, or their agencies.

(5) Those involving personal or professional services.

Section 3. Evasion of Advertising Requirements.—No member or members of council shall evade the provisions of Section two hereof by purchasing or contracting for services and personal properties piecemeal for the purpose of obtaining prices under seven hundred and fifty dollars upon transactions which transactions should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than seven hundred and fifty 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 of 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 members of council who so vote in violation of this provision and who

know that the transaction upon which they so vote is or ought to be a 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 member of council may have voted in violation of this section but the purchase or contract on which he so voted was not approved by council, this section shall be inapplicable.

Section 4. Penalty for Interests in Contracts.—Except as otherwise provided in this act, no official of any incorporated town, 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 incorporated town or for any work to be done for such incorporated town involving the expenditure by the incorporated town of more than five hundred dollars in any year; but this limitation shall not apply to cases where such officer or appointee of the incorporated town 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. But in the case of a councilman or president of a town council, if he knows that he is within the exception just mentioned, he shall so inform council and shall refrain from voting on the expenditure or any ordinance relating thereto and shall in no manner participate therein. Any official or appointee who shall knowingly violate the provisions of this section shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the town, to 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.

Section 5. Separate Bids for Plumbing, Heating, Ventilating and Electrical Work.—In the preparation for the erection, construction and alteration of any public building of an incorporated town, when the entire cost of such work shall exceed one thousand dollars, the architect, engineer or other person preparing such specifications shall prepare separate specifications for the plumbing, heating, ventilating and electrical work. The person or persons authorized to enter into contracts for the erection, construction or alteration of such public buildings shall receive separate bids upon each of the said branches of work and award the contract for the same to the lowest responsible bidder for each of said branches.

Section 6. Bonds for the Protection of Labor and Materialmen.—It shall be the duty of every incorporated town to require any person, copartnership, association or corporation entering into a contract with such incorporated town for the construction, erection, installation, completion, alteration, repair of or addition to any public work or improvement of any kind whatsoever, where the amount of such contract is in excess of seven hundred and fifty dollars, before commencing work under such contract, to execute and deliver to such incorporated town, in addition to any other bond which may now or hereafter be required by law to be given in connection with such contract, an additional bond for the use of any and every person, copartnership, association or corporation interested in a sum not less than fifty per centum and not more than one hundred per centum of the contract price, as such incorporated town may prescribe, having as surety thereon one or more surety companies legally authorized to do business in this Commonwealth, conditioned for the prompt payment of all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated. Such additional bond shall be deposited with and held by the incorporated town for the use of any party interested therein. Every such additional bond shall provide that every person, copartnership, association or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided and who has not been paid therefor may sue in assumpsit on said additional bond, in the name of the incorporated town, for his, their or its use, and prosecute the same to final judgment for such sum or sums as may be justly due him, them or it, and have execution thereof. An incorporated town shall not be liable for the payment of any costs or expense of any such suit.

Section 7. Publication of Contract Notices in Trade Journals.—Any incorporated town whose duty it is by law to advertise for bids for public works, contracts, supplies or equipment may, at its discretion, legally authorize the publication of such advertising, in addition to the newspapers specified by law, also in any publication or journal devoted to the dissemination of information about construction work, published at least once a week and circulating among contractors, manufacturers and dealers doing business in the community in which such public works are to be constructed or supplies or equipment purchased. No such advertisement for bids shall be inserted in any such publication or journal devoted

to the dissemination of information about construction work which has not been established and regularly issued from a printing office and publication house in this Commonwealth for a period of at least eighteen months. Such publication and journal shall be entered or entitled to be entered for admission to the United States mails as second class matter, and shall have a bona fide income from subscribers within the Commonwealth of Pennsylvania of not less than fifteen thousand dollars per annum, duly certified by a public accountant. The rates and charges for such advertising shall not be in excess of those of newspapers of general circulation as defined by the act known as the Newspaper Advertising Act.

Section 8. Acceptance by Contractor of Workmen's Compensation Act.—All contracts executed by any incorporated town or any officer thereof which involve the construction or doing of any work involving the employment of labor shall contain a provision that the contractor shall accept, insofar as the work covered by any such contract is concerned, the provisions of the Workmen's Compensation Act of 1915 and the supplements and amendments thereto, and that the said contractor will insure his liability thereunder or file with the incorporated town with whom the contract is made a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Every officer of any incorporated town who shall sign on behalf of the incorporated town any contract requiring in its performance the employment of labor shall require, before the said contract shall be signed, proof that the said contractor with whom the contract is made shall have accepted the Workmen's Compensation Act of 1915 and any supplements or amendments thereto, and proof that the said contractor has insured his liability thereunder in accordance with the terms of said act or that the said contractor has had issued to him a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Any contract executed in violation of this section shall be null and void.

Section 9. Architects and Engineers Employed Prohibited from Bidding on Public Works; Penalty.—It is unlawful for any architect or engineer in the employ of any incorporated town and engaged in the preparation of plans, specifications or estimates to bid on any public work at any letting of such work in this Commonwealth.

It is unlawful for the officers of any incorporated town charged with the duty of letting any public work to

award a contract to any such architect or engineer in the employ of the Commonwealth or of any county, city, borough, incorporated town, township, or other political subdivision of the Commonwealth.

It is unlawful for any architect or engineer in the employ of the Commonwealth or of any county, city, borough, incorporated town, township, or other political subdivision of the Commonwealth to be in anywise interested in any contract for public work for the incorporated town or receive any remuneration or gratuity from any person interested in such contract.

Any person violating any of the provisions of this section shall forfeit his office and shall be guilty of a misdemeanor, and, on conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars or to undergo imprisonment for not more than six months, or both.

Section 10. All acts or parts of acts are hereby repealed in so far as they are inconsistent with the provisions of this act.

Inconsistent acts repealed.

Section 11. The provisions of this act shall become effective immediately upon final enactment.

Act effective immediately.

APPROVED—The 27th day of May, A. D. 1953.

JOHN S. FINE

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No. 35

AN ACT

Providing that the town councils of incorporated towns shall have the right to declare vacant the seats of councilmen or presidents of town councils for failure to qualify and for failure to attend meetings or vote upon questions before the council.

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

Towns.

Section 1. Whenever any person elected or appointed a member or president of the town council of any incorporated town who has been notified of his election or appointment shall refuse or neglect to qualify as such member or president of such town council within ten days next succeeding the beginning of his term of office, unless prevented by sickness or prevented by necessary absence from the town, the town council acting without such person may declare his office as member or president of the town council vacant and such vacancy shall be filled in the manner now provided by law. For such actions a majority of the remaining members of the council shall constitute a quorum.

Town council may declare vacant office of any person elected or appointed member, or president, of town council, for refusal or neglect to qualify.