

Ky. OAG 78-725, 1978 WL 26279 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 78-725

October 25, 1978

Honorable W. E. Rogers, III
Attorney at Law
601 South Main Street
Hopkinsville, Kentucky 42240

Dear Mr. Rogers:

This is in answer to your letter of October 19 in which you, as attorney for the Hopkinsville Electric Plant Board, request an opinion concerning the following:

“Is it necessary that the Hopkinsville Electric Plant Board advertise for bids for computer billing service?”

Our response to your question would be in the affirmative since we do not believe that a computer billing service would fall in the category of professional services which are exempt under the bidding statute applicable to cities and their boards and commissions, namely [KRS 424.260](#), which reads in part as follows:

“Except where a statute specifically fixes a larger sum as the minimum for a requirement of advertisement for bids, no city, county or district, or board or commission of a city or county, may make a contract, lease, or other agreement for materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional, involving an expenditure of more than five thousand dollars (\$5,000) without first making newspaper advertisement for bids. . . .” (Emphasis added).

The term “professional services” as used in the above statute refers to those services furnished by a physician, lawyer, engineer, artist, architect, etc. In the case of [Jeffersontown v. Cassin, 267 Ky. 568, 102 S.W. 2d 1001 \(1937\)](#), the court, in declaring that architectural services were professional and not subject to competitive bidding, cited a number of cases as well as *McQuillon on Municipal Corporations*, which we quote as follows:

“. . . The court in that case [[Gleason v. Dalton, 28 App. Div. 555, 51 N. Y. S. 337, 341](#)] cited [People v. Flagg, 17 N.Y. 584 \(2d., 5 Abb.Prac. \[N. Y.\] 232\)](#) and said:

““It would be an unreasonable and mischievous construction of the statute to apply it to services which require in their performance scientific knowledge or professional skill.” The particular phrase under consideration in that case was, “all work to be done and supplies to be furnished.” The character of the service therein was making a survey and furnishing a map of the wharves and piers of New York City.’

“Quoting [Harlem Gaslight Co. v. Mayor, 33 N.Y. 309](#), the court continued:

“If the contract requires professional services, those of an engineer, a physician, lawyer or an artist, or if it requires services of any kind to be furnished upon a sudden or unforeseen emergency, of greater value than \$250.00, and these things can only be obtained through the forms prescribed by statutes, they can not be obtained at all, for these things can not become the subject of a competitive offer to be consummated by a written contract with the person making the offer. Other cases hold to a similar doctrine, and commend themselves as being the true construction of legislative intention. [Matter of Petition of Dugro, 50 N.Y. 513; City of Hartford v. Hartford Electric Light Co., 65 Conn. 324, 32 A. 925.](#)’

*2 “In *McQuillon on Municipal Corporations* (2d Ed.) sec. 1292, [now 3rd Ed., § 29.35] it is said:

“Provisions as to competitive bidding have been held not to apply to contracts for personal services depending upon the peculiar skill or ability of the individual, such as the services of a court stenographer, an attorney-at-law, a superintendent or architect to supervise and make suggestions relative to work let under competitive bidding, or a consulting or supervising engineer. And generally the requirement does not apply to the employment of a professional man, in which case the authorities have a discretion as to his qualifications.’

We also might cite the following excerpt from the case of [City of New Rochelle v. Friedman, 190 Misc. 654, 78 N.Y.S. 2d 681 \(1947\)](#), wherein it defines the term “profession” as follows:

“. . . ’ “What is a profession? In general, it may be said that a profession includes any occupation or vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art founded on it. The word implies attainments in professional knowledge, as distinguished from mere skill, and the application of such knowledge to uses for others as a vocation.” ’ ’ ”

And, finally, we wish to call your attention to the statutory definition of the term “professional services” as found Ch. 274 of KRS, particularly [KRS 274.005\(2\)](#), which reads as follows:

“(2) ‘Professional service’ means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which, prior to the passage of this chapter and by reason of law or a professional code of ethics, could not be performed by a corporation. The personal services which come within the provisions of this chapter are the personal services rendered by, but not limited to, certified public accountants, public accountants, chiropractors, osteopaths, physicians and surgeons, doctors of medicine, doctors of

dentistry, podiatrists, chiroprodists, architects, veterinarians, optometrists and attorneys at law.”

It is apparent from the above cited cases, texts and statutes, that the term “professional services” could in no way include the furnishing of computer billing services contemplated by the electric plant board and, as a consequence, the board would, in our opinion, be required to advertise for bids for this type of service in compliance with [KRS 424.260](#), assuming of course that the cost of such services will exceed five thousand dollars (\$5,000).

Yours very truly,
Robert F. Stephens
Attorney General

By: Walter C. Herdman
Assistant Deputy Attorney General

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