

Ky. OAG 80-624, 1980 WL 103254 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 80-624

November 25, 1980

Ms. Erma Staton
Fiscal Director
Campbell County
Department of Fiscal Affairs
P.O. Box 340
Newport, Kentucky 41072

Dear Ms. Staton:

You raise the question as to the legal method of procuring an audit of Campbell County funds. Specifically you are asking whether or not bidding procedure would apply.

Pursuant to [KRS 45A.343](#) (Acts 1980, Ch. 250, § 9, effective April 4, 1980), any fiscal court may adopt the provisions of [KRS 45A.345](#) through [45A.460](#) of the Kentucky Model Procurement Code. No other statutes governing purchasing shall apply to a fiscal court upon adoption of these provisions. Such an adoption of the Model Procurement Code, however, requires a positive legislative act on the part of fiscal court. Where the fiscal court has not specifically adopted the procurement code, as aforementioned, [KRS 424.260](#) would apply.

[KRS 43.070\(1\)](#) requires the State Auditor to annually audit the county's funds. However, under [KRS 67.080\(1\)\(c\) and \(d\)](#) (the fiscal court's power to regulate and control the fiscal affairs of the county), the fiscal court has the authority to employ accountants to audit, inter alia, the county's funds, as regular employees. In addition, the fiscal court may procure the services of an outside accounting or C.P.A.

firm to audit the county's funds.

If Campbell County has adopted the Model Procurement Code, the fiscal court may procure a private accounting or C.P.A. firm to audit the county's funds (involving county budget and treasury) by way of noncompetitive negotiation pursuant to [KRS 45A.380](#). This involves a written determination that competition is not feasible and that the contract is for services of a licensed professional. See [KRS 325.261](#) (certified public accountants) and [325.330](#) (public accountants). C.P.A.'s and public accountants are licensed professionals.

If Campbell County has not adopted the model code, and is thus under [KRS 424.260](#), the procurement of the services of a public accountant or certified public accountant, in order to audit the county's funds, would not require formal bidding procedure, since the statute ([KRS 424.260](#)) expressly excepts from its operative effect "professional services."

In speaking of the bidding principle, we find this in 72 C.J.S., Supp., Public Contracts, § 9, p. 185:

"Generally, such statutes apply only to contracts for public work that is naturally competitive, and they may be construed to be inapplicable where the nature of the improvements to be constructed or the services to be provided are such that competitive proposals would be unavailing or would not produce an advantage."

The case of [Handy v. Warren County Fiscal Court, Ky. App., 570 S.W.2d 663 \(1978\)](#) 664, 665, reflects the ultimate reasons underlying the bidding principle:

"It has been noted that the advertisement requirement and the bidding process itself involves three important benefits: (a) an offering to the public, (b) an opportunity for competition and (c) a basis for exact comparison of bids. OAG 74-420."

*2 Where there is no opportunity for competition, the bidding principle would be of no value. This

largely explains the exceptions to bidding as outlined above.

Sincerely,
Steven L. Beshear
Attorney General

By: Charles W. Runyan
Assistant Deputy Attorney General

Ky. OAG 80-624, 1980 WL 103254 (Ky.A.G.)
END OF DOCUMENT