

PURPOSE OF COMPETITIVE BIDDING

Sirs: This is with reference to your Resolutions Nos. 60 and 111, series of 1940, requesting my opinion as to whether the municipal council can condone contractual obligation of private persons to the municipality arising from the lease of fishery privilege. It is the policy of this office not to answer broad questions but only those actually pending; and, as appears from the within papers, the only query pending is as above stated.

Neither the Municipal Law nor the Fisheries Act contains any express provision on condonation. However, section 69 of Act No. 4003 as amended by Commonwealth Act No. 471 declares that a fishery privilege "shall be let to the highest bidder."

The requirement of competitive bidding is for the purpose of inviting competition and to guard against favoritism, fraud and corruption in the letting of fishery privileges (See 3 McQuillin, Mun. Corp., 2nd ed. p. 858; Harles Gaslight Co. v. New York, 33 N. Y. 309; 2 Dillon, Mun. Corp., p. 1219). On the principle that the terms and purpose of the governing statutes constitutes in themselves a restriction on the power to amend and alter a contract, once made in accordance therewith (Morse v. City of Boston, 148 N. E. 813. 253 Mass. 247, Capital City Brick & Pipe Co. v. City of Des Moines, 127 N. W. 66, 68; Hedge v. Des Moines, 119 N. W. 276), a municipal council may not remit the rent of fishery privilege granted through competitive bidding in the absence of an express provision so authorizing. Otherwise, the council may connive with a favored

bidder, who gladly makes the highest and best bid on the assurance that his obligations thereunder will be subsequently remitted. This is precisely one of the evils sought to be remedied by the law requiring competitive bidding. "It would be a vain thing for the legislature to establish these safeguards for the public treasury to govern initial execution of a contract and yet to permit all the evils thus prohibited to be accomplished by amendment or alteration of such a contract when once executed . . ." (Morse v. Boston, *supra*).

Furthermore, the condonation of an existing obligation by a municipality is tantamount to squandering or giving away its funds or property which a municipal council cannot do (Sec. 2288, Rev. Adm. Code). In Ludlow Valve Mfg. Co. v. City of Chicago, 181 Ill. App. 388, the court, in holding that the city council of Chicago had no power to waive the liquidated damages due on account of delay in delivering the work contracted for as agreed upon the original contract, said:

"The (city council) have no power to squander or give away the funds or property in their control, belonging to the corporation; they must be honestly applied to the use and purposes specified in the act of incorporation. The city council have no power to sell, or in any manner dispose of, the property of the corporation without consideration, and, in our opinion, *have no right to discharge a debt without payment*, which may be held against parties who are solvent and responsible, where no controversy exists in regard to the validity and binding effect of the indebtedness."

In view thereof, I am of the opinion that a municipal council cannot condone contractual obligations of private persons to the municipality arising from the lease of fishery privilege."—*Letter dated October 4, 1940 of Sec. of Justice Jose A. Santos to the Municipal Council of San Jose, Antique, being Opinion No. 240, Series of 1940.*

Discretionary Power . . .

granted after at least one year of continuous, faithful, and satisfactory service. (See C. A. 490).

(t) To levy an annual privilege tax upon carts and sledges used upon any public road in a municipality, in accordance with section twenty-three hundred and thirteen.