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OPINION COMMITTEE

Ralph J. Bernsen, Sr
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KIM HAVEL
Assistant County Attorney

November 26, 2007

FILE # ML-45466-07

I.D. # 045466

RE: Request for Attorney General Opinion

Office of the Attorney General
P. O. Box 12548
Austin, TX 78711-2548

RQ-0651-GA

This request is to settle a dispute as to the method by which Medina County is authorized to terminate a Lease/Purchase contract with Caterpillar Financial Services Corporation.

A copy of the lease in question is enclosed. The provisions pertinent to this request are Paragraphs 13, 14 and 15 of the lease.

The lease provides that at the end of the lease, Lessee may opt to return the equipment to Lessor or purchase the equipment from lessor.

In this case, the County opted to return the equipment to lessor.

However, the current title holder of the equipment is Caterpillar Financial Services Corporation and the equipment needs to be transferred to Holt Caterpillar, Inc. Holt Caterpillar paid Medina County \$15,000.00 for the equipment. In order to effect the return of the property to Holt Caterpillar, the Lessor intends to transfer the property to Medina County and wants Medina County to transfer the property to Holt.

In researching this matter, I find that the Local Government Code, Sec.263.152 (b), copy enclosed, provides that the repurchase of property as provided in a repurchase contract is considered a bid, but found no case exactly in point on the question.

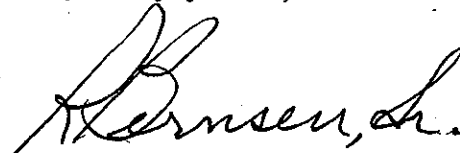
It is my opinion that the transfer of the property is merely a vehicle to exercise the option to return the property to Holt Caterpillar under the option in the contract to

return the property at the end of the term of the Lease/Purchase contract, and that it is not necessary to seek bids for the sale of the contract.

However, the Medina County auditor is of the opinion that if the property goes into the inventory of Medina County, no matter for what purpose, it will be necessary to seek bids for the sale of the property.

I, therefore, am requesting an Attorney General Opinion clarifying whether or not it is necessary to seek bids on the equipment when the transfer is merely a vehicle to exercise the return option in the Lease/Purchase contract.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bernsen, R.", written in a cursive style.

Ralph J. Bernsen, Sr.