

I have examined the precedents as to what constitutes such a public interest, and there appears to be no support for the view that extensive damage to persons and property as a result of a disaster gives rise to such a public interest that the State can bring an action to redress the wrong.

Even if the State could be a party plaintiff in this matter, it seems well settled that it could not maintain a suit against the Federal Government. The law was so stated in *State of Florida vs. Mellon*, 273 U. S. 12, 18, as follows:

"Nor can the suit be maintained by the State because of any injury to its citizens. They are also citizens of the United States and subject to its laws. In respect of their relations with the Federal Government—
'it is the United States, and not the State, which represents them as *parents patriæ*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status.' *Massachusetts vs. Mellon*, *supra*, pages 485, 486 (43 S. Ct. 600)."

The foregoing opinion makes it unnecessary to determine whether the United States Coast Guard was negligent in the promulgation and enforcement of rules for the safe handling of explosives on waters under its jurisdiction.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: THOMAS P. COOK,
Deputy Attorney General.

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SEPTEMBER 12, 1950.

HON. R. J. ABBOTT,
State Highway Commissioner.

FORMAL OPINION—1950. No. 59.

DEAR MR. ABBOTT:

Your letter of September 6 raises several questions, which I shall endeavor to to answer below in the order presented.

1. Your first inquiry is whether, where a State aid project is involved, the opening of a bid by a municipality constitutes a determination by the municipality that the bidder is qualified. The answer is "No." It is well settled that until a contract is actually awarded, both municipalities and counties have the right and duty to examine the qualifications of the low bidder to whatever extent is necessary for a determination that he is the lowest responsible bidder. *Faist vs. Hoboken*, 72 N. J. L. 361; *Kelly vs. Freeholders of Essex*, 90 N. J. L. 411; *Selitto vs. Cedar Grove Township*, 133 N. J. L. 41; See also R. S. 40:25-21. However, the lowest bid can not be rejected because of the irresponsibility of the bidder unless he is given reasonable notice and opportunity to be heard. *Araneo-White Construction Co. vs. Joint Municipal Sewer Commission*, 9 N. J. Misc. 243; *Ianniello vs. Harrison*, 4 N. J. Misc. 111.

2. Your second, third and fourth inquires all raise, in substance, the question whether the State Highway Commissioner, in projects for State aid to counties or municipalities, has the right to throw out any or all bids received by the county or municipality, respectively, on the ground that the low bidder is not qualified. In my opinion, the Commissioner has no such right. Where contracts for highway work are to be awarded by the county, the procedure and the qualifications of bidders are governed by the specific provisions of the county law (R. S. 40:25-1 et seq.; see also 27:16-41 and 27:14-12). Likewise, provisions governing contract work for municipalities are set forth in R. S. 40:50-1 et seq. The general municipal law also gives to the governing body of every municipality the right to "prescribe the form and manner of execution and approval of all contracts to be executed by the municipality." R. S. 40:48-1.

It is true that the State Highway Commissioner, in administering State aid, has the power to reject contracts for which State aid is to be given. R. S. 27:14-13; 27:15-1 et seq. The grant of such power must nevertheless be construed in conjunction with the above cited provisions of the county and municipal laws. When all these pertinent statutes are read together, it seems clear that the Commissioner's power does not include the right to fix the qualifications of bidders as a condition of approval of State aid. The authority of the Commissioner would appear to be limited to protecting State funds by requiring the price to be reasonable and the plans, specifications and work to conform to recognized standards. See R. S. 27:14-3; 27:16-22; 27:14-47; 27:15-1.3; 27:15-1.14E. If a municipality or county objects to the low bidder on the ground of lack of qualifications, it is that body, and not the State Highway Commissioner, that should conduct the hearing and reject the bid on that ground.

3. Your last question asks what authority you have to establish a procedure for taking bids. As has already been implied above, your authority in this regard does not extend to county or municipal contracts, even though State aid may be involved. In regard to contracts to be awarded by the State, the pertinent statutes (particularly R. S. Title 52, Chapters 34 and 35) prescribe in detail the procedure for advertising for bids, receiving and opening the proposals, awarding the contract, and determining the qualifications of bidders. However, if there are minor details concerning which you desire to establish a procedure in conformity with the law, your authority for so doing could be based, in my opinion, on R. S. 27:1-8, which provides that the Commissioner "may formulate and adopt rules and regulations and prescribe duties for the efficient conduct of the business, work and general administration of the department."

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: THOMAS P. COOK,
Deputy Attorney General.