August 8, 1934

Mr. E. H. Whitworth, Superintendent
Motor Vehicle Division, State Highway Department
Phoenix, Arizona

My dear Mr. Whitworth:

I have your letter of July 30th, in which you request my opinion as to the right of the Highway Commission to accept bids based on proposals outlined in the letter from the Portinbury Company, Inc., under date of May 26, 1934, which letter you attached to your request. The bids which the Portinbury Company proposes to submit are outlined in their letter as follows:

1. We will agree to supply the plates, bolts and nuts at a definite contract price to be exactly the same in amount as that necessary for the purchase of plain plates, with a provision that the State shall pay to us an additional amount to be agreed upon in the event the State's revenue from the sale of the Lock Type License Plate has increased over the preceding year in an amount sufficient to offset the contingent added cost.

2. We will agree to supply the plates, bolts and nuts at a definite price provided that in the event the State's revenue by the use of the Lock Plate shall not increase in an amount equal to the additional cost, the Commission shall have the right to deduct the difference in the cost of our Plate and that of the plain plate from the price to be paid.

3. The third alternative proposal would be similar to number 2 above, except that we would agree to reimburse the State for the exact difference in the price of our Plate and the plain type, in the event the revenue had not increased as stated above, - rather than having this amount deducted in the first instance by the State.

I have examined the three proposed bids of the Portinbury Company and have noticed with interest the discussion contained in the letter. It is true, as stated in

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the letter of the company, that a legal contract might be entered into on the basis of one of the proposals, provided the Department could award the contract for the license plates to any company it desired. However, that is not the case in this State. The Commission must award the contract for the license plates to the lowest responsible bidder.

The proposals or bids proposed to be submitted by the Fortinberry Company would be indeterminate, and it would be impossible for the Commission to decide what bid was submitted by Fortinberry Company for the reason that all three of the proposals depend on contingencies which may or may not take place. It would be practically impossible for the Commission to determine what the bid of Fortinberry Company would be, so that the provisions of our law, in respect to awarding to the lowest responsible bidder, could not be applied to the bids of Fortinberry Company.

Very truly yours,

Attorney General

JRM:B Assistant Attorney General

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