

July 26, 1941.

Mr. Don C. Merrill,  
Deputy County Attorney,  
Safford, Arizona.

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Dear Sir:

We have your letter of this date in which you state:

" This question comes from the board of trustees of Safford School District No. 1 of Graham County, concerning certain complaints made by general contractors of Safford, Arizona, all of said complainants being unsuccessful bidders on the construction of an elementary school building now completed at said school.

" Specific complaints are irregularities in the calling for bids by the architect on said project in that the architect, shortly before the time for the submission of bids, orally notified the different contractors to submit alternates with or without stucco, thus deviating from his original call and plans and specifications.

" There seems to be no allegations by the complainants that failure of notification to any contractor is an element. However, upon the awarding of the contract the successful bidder, C. L. Roach made no mention of an alternate.

" On the evening of the opening of the bids all of the contractors involved were personally present before the board. Discussion was had at that time concerning the manner of calling for bids and Mr. Roach was asked in the presence of everyone if his bid included stucco to which he replied that it did not.

" The board apprehensive of the irregularity orally informed all parties present on that evening that the award would not be made until the following evening. On the following evening no formal complaint having been received by the board, the board proceeded to award the contract to Mr. Roach at the same time modifying the contract to include stucco.

" During the period of construction two other changes materially affecting the building were ordered by the board upon the recommendation of their architect and prices submitted by the architect were added to the contract.

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" The original contract was in the sum of \$25,787.04. The extend of the three changes brings the total contract price, at the completion of the building to \$28,000. The next lowest bid submitted was the sum of \$29,764.11.

" The board is not satisfied with the unit prices and the explanation thereof submitted by their architect, but does not feel that exorbitant figures have been paid the contractor under any explanation thereof.

"Opinion desired: 1. Does the awarding of the bid as outlined above constitute any violation by the board of trustees?

" 2. Assuming that the prices arrived at in the various changes made on the building during construction are excessive but not exorbitant and based entirely in good faith by the board upon the architect's recommendation, does the payment of such sums constitute any violation on the part of the board?"

Answering your first question it is the opinion of this office that the awarding of the contract in the manner outlined in your letter does not constitute a violation of the law by the board of trustees.

Answering your second question it is the opinion of this office that if the building completed for the district is actually worth the amount claimed (so long as the amount claimed does not exceed the original amount set aside for the building) that the payment of such sums as you outline in your letter does not constitute a violation of the law by the board.

Yours very truly,

JOE CONWAY,  
Attorney General.

EARL ANDERSON,  
Special Assistant  
Attorney General.