

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

September 19, 1951

Op. No. 51-249

Y
JWS
9/22/51

Mr. J. LaMar Shelley
City Attorney
Mesa, Arizona

Dear Mr. Shelley:

This is in reply to your letter of August 15, 1951, regarding Section 12-401 ACA 1939 and you ask the following question:

"In the event a city officer is a lowest bidder and furnishes equipment to the city, what, in your opinion, would be the result of a suit in the event a taxpayer should question such sale?"

Our Supreme Court in a fairly recent case which is entitled Henderson v. McCormick, 70 Ariz. 19, 215 P. 2d 608, has answered this question very completely, it appears to us, regarding a reversed dealing from the question you ask. We believe the same principle will apply in the purchase of materials as in the sale of materials. The court, quoting from 4 Dillion, Municipal Corporations, Section 1586, said:

"Equity does not interfere with the action of administrative officers of a municipality at the suit of a taxpayer unless the taxpayer and his class have sustained or will sustain some pecuniary loss, and it must affirmatively appear by the complaint that such loss will occur."

The court further said:

" * * * 'The mere illegality of the official act in and of itself does not justify injunctive relief at the request of the taxpayer. To be entitled to this relief, when waste or injury is not involved, it must

51-249

J. LaMar Shelley
Mesa City Attorney

September 19, 1951
Page Two

appear that, in addition to being an illegal official act, the threatened act is such as to imperil the public interest or calculated to work public injury or produce some public mischief."

We are therefore of the opinion that unless the plaintiff could show some pecuniary loss or damage or produce some public mischief to the municipality he would not have a cause of action against the officer. We think it fair to you and the officer that your attention should be called to Section 43-1705 ACA 1939 which is as follows:

"Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing evidences of indebtedness, who violates any provision of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison not more than five (5) years, and is forever disqualified from holding any office in this state."

Very truly yours,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

CR:f