

No. 58.

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

New Jersey Court of Errors and Appeals

<p>Fred Maginnis, et als, <i>Prosecutors and</i> <i>Appellants,</i> vs. The City of Wildwood, et als, <i>Defendants and</i> <i>Respondents.</i></p>	}	<p>On Appeal from Supreme Court.</p>
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BRIEF FOR RESPONDENTS.

STATEMENT.

The minutes of the City Commissioners of Wildwood show the bids were to be asked for for the removal of garbage for a period of five years.

The advertisement was for bids for a term of years not to exceed five years.

The only question now before the Court is whether with this minute of the City Commissioners, to advertise for bids for a term of five years, prevents an award in accordance with the advertisement for a term of years not to exceed five.

ARGUMENT.

We have been unable to find a reported case where this question has been determined.

Justice Black in the opinion in the Supreme Court, 108 Atl. 780, said, "The point made is, the statement in the minutes is controlling. It is argued and attempted to be proved that all the parties in interest understood that the award was to be for a term of five years, but the legal situation growing out of these facts is, as to proposals made in strict compliance with the terms of the advertisement for bids, under the statute, the award must follow such advertisement or the contract will be invalid. *Armitage vs. Mayor, etc., of Newark*, 86 N. J. Law, 7, 90 Atl. 1035. The award must follow the terms of the advertisement. *Godfrey vs. Freeholders of Atlantic County*, 89 N. J. Law, 514, 99 Atl. 843; affirmed 90 N. J. Law, 517, 101 Atl. 57."

It is not contended that the prosecutors or any other bidders knew anything about the action of the Commissioners which it is alleged was entered in the minutes. All the information the bidders had was contained in the advertisement. All had the same information.

It is so well settled that the award must follow the terms of the advertisement, that the many cases need not be cited, except as referred to in Justice Black's opinion in the Supreme Court.

There can be no question that it was within the discretion of the city authorities to decide that it was more advantageous to let the contract for any term not exceeding five. In *Armitage vs. Mayor, &c., of Newark*, 90 Atl. 1035; 86 L. 5, Justice Garrison said, "They had exercised this right once when

they publicly advertised that bids would be received &c."

The advertisement expressly calls for bids for a period of years not exceeding five.

In *Schwitzer vs. Board of Education of Newark, et al.*, 75 Atl. 447, Justice Trenchard on page 449 said, "It is further urged that the specifications were so indefinite that they did not protect the interest of the city. We see no merit in the contention. No bidder seemed to have thought the specifications at all indefinite. Moreover, our examination satisfies us that bidders were duly informed by the specifications as to the nature, quality and quantity of the materials to be furnished and the work to be done, and that the same information was furnished to all. This we think resulted in intelligent and competitive bidding and in a binding contract."

The minute said that the bids be advertised for a period of five years. However, sometime afterwards the bids were asked "for a term of years not exceeding five," our contention therefore is,

First. Advertisement and not the minute of the Commissioners controls.

Second. None of the bidders were deceived. The advertisement is quite plain.

Third. All the bidders submitted their bids in response to the same advertisement.

Fourth. It is immaterial what one of the Commissioners thought, or the City Solicitor thought, or what any one else thought, the advertisement must speak for itself.

We, therefore, ask that the judgment of the Supreme Court be affirmed to the end that the record may be remitted.

HARRIS & HARRIS,
*Of Counsel for Defendant-
Appellee.*

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