

New Jersey Court of Errors and Appeals.

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THE STATE, THOMAS DELKER,
Prosecutor and Defendant-in-Error

vs.

The Board of Chosen Freeholders
of Atlantic County, Press-Union
Publishing Co., Atlantic City
Review,

Respondents and Plaintiffs-in-Error.

On Certiorari.

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BRIEF OF E. A. HIGBEE, ATTORNEY FOR RESPONDENTS AND PLAINTIFFS-IN-ERROR

This is an appeal from the judgment of the Supreme Court entered on writ of certiorari.

The first ground for reversal is that the judgment is not in accord with the opinion of the court as stated by the court, in that the judgment sets aside the proceedings with costs whereas the opinion only ordered the award of the contract set aside with costs. (See opinion and rule for judgment, pp. 17-18, State of Case.)

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The action of the Board of Chosen Freeholders which was under review was a motion whereby the legal advertising required to be done by the Board of Chosen Freeholders was awarded to the Atlantic City

Press and Atlantic City Review at the legal rate given in the bid of the Atlantic City Press.

P. 10, L. 20.

No contract had been entered into between the Board of Chosen Freeholders and these newspapers. They were simply the newspapers designated to do the legal advertising.

10 P. 14, L. 20.

The court in its opinion held that in official advertising, "the board was free to select the instrumentalities for the performance of the work but limited their charges for the same to the fees fixed by statute,"

P. 16, L. 10.

Hence, all the opinion of the court attempted to do was to set aside the contract because it seemed to have concluded that the contract was in excess of the statutory rate.

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Reasons two, three and four may be argued together, which reasons contain the real grievance of the respondents and plaintiffs-in-error, which are based upon the ground that the court found that the award of the contract was at a figure much in excess of the statutory limitation.

P. 17.

30 How the court arrived at that finding, I am unable to see. I cannot find anything in the State of the Case that justifies such conclusion. In the first place, no contract was awarded, and it was so stipulated by counsel,

P. 14, L. 20.

Certain papers were designated by the Board of Chosen Freeholders in which the legal printing should

be done, for which they were to receive the legal rate. That, at least, was the sense of the action of the Board of Chosen Freeholders, as will appear by reading the proceedings on pages 9 and 10. "Mr. Johnson moved that all bids for legal printing be rejected and that they award the legal printing to newspapers upon the sole theory of those which would give the best and widest advertisement and of different political faith," which motion was adopted. Mr. Haines then moved "that the bids for legal advertising be awarded to the Atlantic City Press and the Atlantic City Review at the legal rate given in the bid of the Atlantic City Press," which motion was adopted.

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pp. 9 and 10.

By reference to the bid of the Atlantic City Press, it will be found that their offer was to "publish said advertising in Atlantic City Daily Press at ten cents per line for the first insertion and eight cents per line for each subsequent insertion, each line averaging at least seven words, as provided by law."

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P. 7, L. 20.

The law fixing the legal rate for official advertising is the act of 1909 C. S. 3762 (See court's opinion p. 16, L. 10). This act, among other things, provides that "Hereafter the price to be paid for the publishing of all official advertising in newspapers, published..... in counties of the first and second class in this State, shall be at the rate of ten cents per agate (or 5½ point) line for the first insertion and eight cents per agate line for each subsequent insertion; provided that in computing such charge, the lines shall average at least seven words."

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Atlantic County is a county of the second class, about which there is no contention.

I am unable, therefore, to see upon what theory the court below concluded that a contract had been let

at a figure far in excess of the statutory limitation; in fact, the prosecutor below did not argue, either in his brief, or orally, that point.

It is therefore urged that the judgment of the Supreme Court should be reversed and that judgment be entered in favor of the respondents and plaintiffs-in-error, and that the writ be set aside with costs and costs of this appeal.

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Respectfully submitted,

E. A. HIGBEE,
Attorney for Respondents
and Plaintiffs-in-Error.

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New Jersey Court of Errors and Appeals

THOMAS DELKER,

Prosecutor-Respondent,

vs.

BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF ATLANTIC,
et als,

Defendants-Appellants.

*On
Certiorari.*

Brief of Prosecutor-Respondent

RESPONDENT'S POINTS.

Facts.

The Board of Chosen Freeholders of the County of Atlantic called for "sealed bids or proposals for the publication or printing of all public notices or advertisements authorized by the Board of Chosen Freeholders, including monthly and annual financial statements, on January 12th next, Memorial Hall, Atlantic City, N. J., at 11.30 o'clock a. m." The call further provided "and the successful bidder, or the one to whom the contract is awarded must enter into a written contract, &c." (page 5).

The Atlantic Review Company, and Press-Union Company, the News, Egg Harbor, and the South Jersey Star, owned and controlled by the respondents, submitted proposals in response to the Board's request. Press-Union Company proposed ten cents per line for the first insertion and eight cents per line for each subsequent insertion. This applied to both the Evening Union and Atlantic City Daily Press, owned by the Press-Union Company. The Atlantic Review proposed four cents a line for all one time insertions and three cents a line for each subsequent insertion; the

News, Egg Harbor, proposed six-eighths of a cent per single column line and South Jersey Star proposed seven-eighths of a cent per line. After considerable parleying (see page 9 and 10) the Board awarded the contract to Atlantic Review and Atlantic City Daily Press at the rate named by the Atlantic City Daily Press, and which was, as will be observed, much in excess of the rate proposed by Atlantic Review. The contract was not awarded to the lowest bidder. The return shows (page 10), "Mr. Johnson moved that all bids for legal printing be rejected and that they award the legal printing to two newspapers upon the sole theory of those which would give the best and widest advertisement, and of different political faith." Later the return says, "The printing committee retired and reported back and Mr. Haines, chairman of the committee, moved that the bids for legal advertising be awarded to the Atlantic City Press and Atlantic City Review at the legal rate given in the bid of the Atlantic City Press." The stipulation (page 14) shows that the amount to be expended for printing will exceed the sum of five hundred dollars.

POINT ONE.

The Award Should Have Been to the Lowest Bidder.

The case is controlled by Chapter 342 of the Laws of 1912, page 593. In substance the act provides that where the sum to be expended "for the doing of any work or for the furnishing of any material or labor" shall exceed the sum of five hundred dollars, the contract for the doing of any work or the furnishing of any material or labor shall be invalid unless there is a public advertisement for bids and the award of the contract is to the lowest responsible bidder. Certainly "the publication or printing of all public notices for advertisements authorized by the Board of Chosen Freeholders, including monthly and annual financial statements" is "for

the doing of any work or the furnishing of any materials or labor" within the meaning of the Act of 1912. The amount to be expended was in excess of five hundred dollars so that the Board was required to award to the lowest bidder if awarded at all. The pretended effort to reject the bids and award upon the theory that consideration was given solely to the question of the papers that "would give the best and widest advertisement, and of different political faith," was a pretext and a sham. One cannot read the record without being compelled to find that the letter from the Atlantic City Press made itself impressed upon the minds of the members of the Board and that they determined to award it the contract regardless of the statute and then sought to give respectability to the transaction by likewise awarding to the Atlantic City Review. The transaction was inhibited by the cited statute.

POINT TWO.

The Act of 1909, Chapter 67 Cannot be Successfully Invoked to Support the Award.

This act was invoked by appellants to support the award and it was argued that it was mandatory upon the Board of Freeholders to award the contract for a sum not less than that prescribed by the act. We contended in the Supreme Court and that court seems to have conceded its force, that the statute of 1909 fixes a maximum rate for official advertising. This does not mean that the Board was compelled to award the full amount authorized by the statute. Moreover, the statute being limited to official advertising and the award having comprehended more than official advertising and thereby drawing the statute of 1912 to which compliance was not had, the whole award was rendered void. It was incumbent upon the appellant to show that the work contemplated by the award was within the act of 1909 and this it failed to do.

Again, the act of 1912 has repealed the act of 1909. The act of 1912 is very comprehensive and includes all work &c. While there is no express repealer we think a repealer is necessarily implied. There is nothing in the act of 1912 which indicates an intention to except any kind of work or the furnishing of any kind of material. It deals with the whole question of the doing of work or the furnishing of material where the amount expended is to exceed five hundred dollars. It seems impossible that the two statutes can stand together. Besides having called for bids and received them it does not now lie in the mouth of the Board or any of the bidders to say that the request for bids was futile. They all waived whatever benefit might otherwise have obtained under the statute.

POINT THREE.

The Notice and Grounds of Appeal Suggest no Legal Error.

If it be true as alleged in the first ground of appeal that the judgment is not in strict accord with the opinion of the Supreme Court it may here and now be amended to accord with the opinion.

The second ground deals only with the question of fact and that fact being found adversely to the appellant, this court will not review the finding.

The same applies to the third ground—and also the fourth.

Nowhere is it suggested or claimed that there was error of law. It was incumbent upon the appellant to point out in what respect the judgment is illegal and in what respect the Supreme Court erred as a matter of law. This has not been done.

For these reasons the judgment of the Supreme Court should be affirmed.

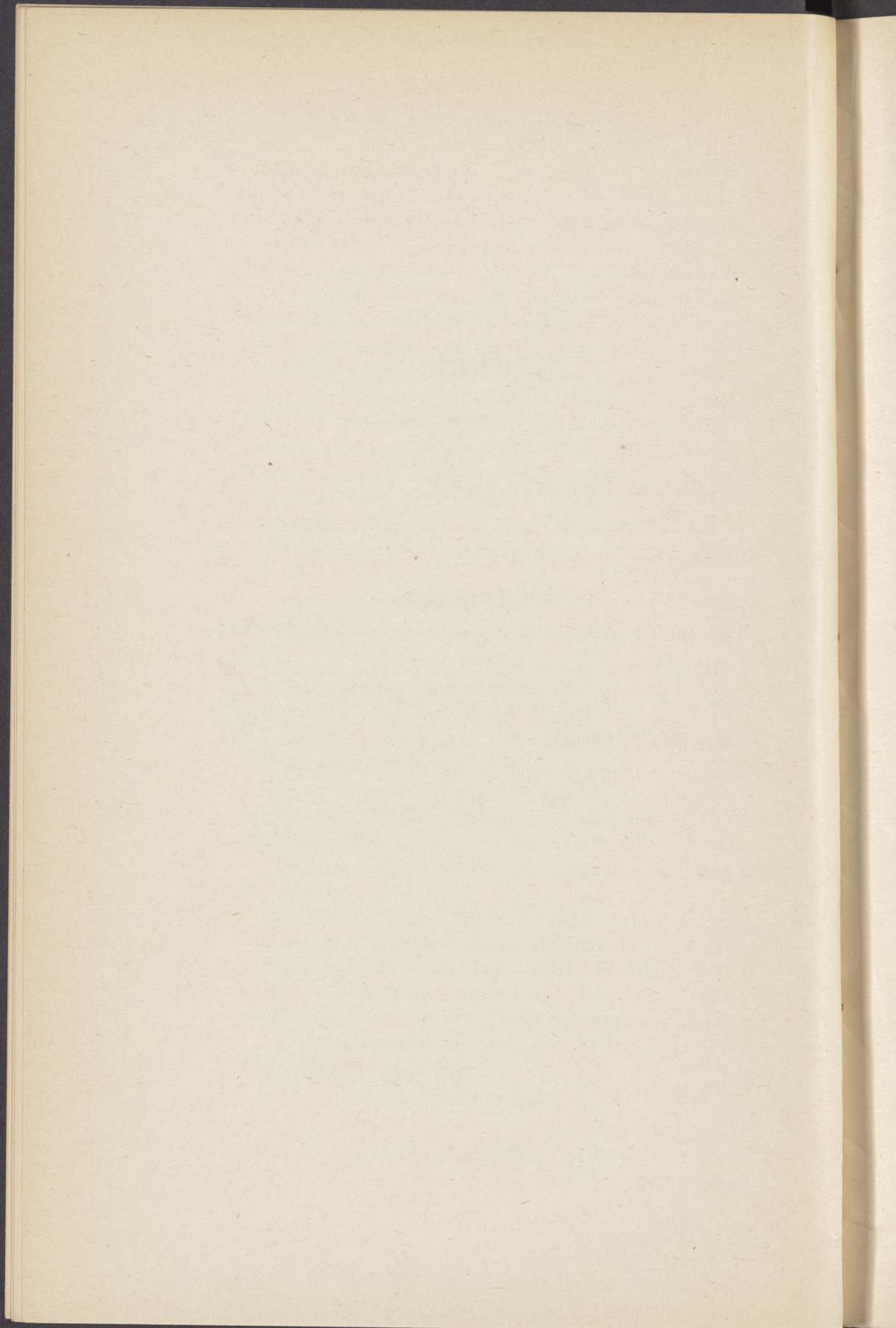
Respectfully submitted,

C. L. COLE,

Attorney for Prosecutor-Respondent.

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NOTICE AND GROUNDS OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

NEW JERSEY SUPREME COURT.

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| THE STATE, THOMAS DEL- KER, <i>Prosecutor,</i> | } ON CERTIORARI. NOTICE AND GROUNDS OF APPEAL. | 10 |
| VS. THE BOARD OF CHOSEN FREEHOLDERS OF ATLANTIC COUNTY, PRESS-UNION PUBLISHING CO., ATLANTIC CITY REVIEW, <i>Respondents.</i> | | 20 |

To C. L. Cole, Attorney of Prosecutor:

Take notice that the respondents, The Board of Chosen Freeholders of Atlantic County and Press-Union Publishing Co., appeal to the Court of Errors and Appeals of the state of New Jersey, from the whole of the judgment entered in this cause, on the following grounds: 30

1. The judgment is not in accord with the opinion of the Court as stated by said Court, in that the judgment sets aside the proceedings with costs, whereas

the opinion only ordered the award of the contract set aside with costs.

2. The judgment is erroneous, being based upon an opinion which found that the contract was awarded at a figure much in excess of the statutory limitation, whereas there was no evidence of that fact but, on the contrary, the evidence showed, as submitted in the state of case, that the award was for the statutory rate.

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3. That the Court found as a fact that the award of the contract was much in excess of the statutory limitation and there was no evidence to justify such finding but, on the contrary, the evidence showed that the award was for the statutory rate.

4. That the Court found as a fact there was a contract awarded at a figure much in excess of the statutory limitation, whereas there was no evidence that a contract was awarded at all, but there was a mere designation of the newspapers that were to print the legal notices at the statutory rate.

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E. A. HIGBEE,
Attorney of Appellants.

WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

THE STATE, THOMAS DEL-
KER,

Prosecutor,

VS.

THE BOARD OF CHOSEN
FREEHOLDERS OF ATLANTIC
COUNTY, PRESS-UNION
PUBLISHING CO., ATLANTIC
CITY REVIEW,

Respondents.

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CERTIORARI.

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(Returnable March 8, 1916.)

(Filed March 6, 1916.)

*State of New Jersey, to the Clerk of the Board of
Freeholders of the County of Atlantic,*

(Seal) GREETING:

We being willing, for certain reasons, to be certified of the action of the Board of Freeholders of the county of Atlantic, at its meeting of January 12th, 1916, in awarding to Atlantic City Daily Press and Atlantic City Review, a contract for the printing and publication of public notices, etc., for said county for the year 1916, do command you, that you certify and send to our Justices of our Supreme Court, at Trenton, on the eighth day of March, 1916, as well

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the said action, motion and resolution, with all things touching and concerning the same, as fully and entirely as they remain before you, together with this, our writ, that we may cause to be done thereupon what of right and according to law and justice ought to be done.

Witness, HON. WM. S. GUMMERE, Chief Justice of our said Supreme Court, this eighteenth day of February, in the year of our Lord one thousand nine hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

C. L. COLE,
Attorney.

RETURN.

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*To the Honorable Justices of the Supreme Court of
Judicature of New Jersey:*

I, ROBERT PRASCH, deputy clerk of the Board of Chosen Freeholders of the county of Atlantic, in obedience to the command of the writ hereto annexed, directed to the Board of Chosen Freeholders of the county of Atlantic, do hereby certify and send to you, the said Justices, the action of the Board of Chosen Freeholders of the county of Atlantic at its regular meeting of January twelfth, nineteen hundred sixteen, in awarding to the Atlantic City Daily Press and the Atlantic City Review the legal printing, and publicatoin of public notices, etc., for Atlantic County for the year nineteen hundred sixteen. Said return contains the notice calling for bids, the

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bids submitted, the action of the Board of Freeholders in connection therewith.

At a regular meeting of the Board of Freeholders of the county of Atlantic, held on the twelfth day of January, nineteen hundred and sixteen, in the Memorial Hall, Atlantic City, N. J., bids were received for legal printing, having been submitted in accordance with advertisement reading as follows:

Notice is hereby given that the Board of Chosen Freeholders of the county of Atlantic will receive sealed bids or proposals for the publication or printing of all public notices or advertisements authorized by the Board of Chosen Freeholders, including monthly and annual financial statements, on January 12, next, at the Memorial Hall, Atlantic City, N. J., at eleven-thirty o'clock A. M. 10

Bidders must state the price or rate per agate line for each insertion, each line to contain at least seven words. Bids to be for papers printed and published only in Atlantic County. The board reserves the right to award the contract to one paper printed and published in Atlantic City and to one paper printed and published in Atlantic County outside of Atlantic City, and the successful bidder or the ones to whom the contract is awarded must enter into a written contract to be prepared by our solicitor guaranteeing to publish such legal notices as are authorized by said board for the price for which they have bid for the term of one year beginning January 1, 1916. 20

DOMINICK CORSIGLIA, 30
*Chairman of Printing and
Stationery Com.*

That the time having arrived for opening the bids, the following bids were opened:

“December 15, 1915.

Mr. Frederick Schuchardt, County Clerk,
Egg Harbor City, New Jersey.

Dear Sir:—Replying to an inquiry by the Board of Chosen Freeholders asking for bids for the publication of all legal advertising for a period of one year commencing January 1st, 1916, the price per line being asked, the Atlantic Review Company agrees to do this advertising in the Atlantic City Review—

At the rate of four cents (\$.04) a line for all one time insertions, and three cents (\$.03) a line for all subsequent insertions of the same advertisement.

Respectfully submitted,
Atlantic Review Company,
W. B. Bell,
President.”

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“Jan. 12—16.

To the members of the Board of Chosen Freeholders—

Gentlemen—I herewith propose to do the county advertising in ‘The News,’ Egg Harbor, for the sum of 6/8 cents per single column line per issue as per your advertisement asking for bids in the above cause.

Respectfully yours,
Frank O. Bieder.”

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“January 11th, 1916.

To the Atlantic County Board of Freeholders:

In compliance with your request for bids for the publication of such legal advertising as will be required by Atlantic County Board of Freeholders,

during a period of one year from January first, 1916, we are pleased to quote you a price of ten cents (10c.) per nonpareil (or six-point) line, each line to average at least seven words, as provided by law, for the first insertion, and eight (8c.) per line for each subsequent insertion to publish your advertising in The Evening Union.

Your Honorable Body is aware that the Evening Union, during the year 1915, published all the official advertising for Atlantic County free of charge, 10 sooner than quote a price other than that fixed by the State Legislature.

We have put forth every effort to render a most efficient service in this connection, and we trust, therefore, that on this account, and also by reason of the Union's Circulation throughout Atlantic County you will consider this bid favorably.

Very truly yours,

The Evening Union,
Per—Press-Union Co., 20
Albert J. Feyl, Treas."

"January 11, 1916.

To the Atlantic County Board of Freeholders:

In compliance with your request for bids for the publication of such legal advertising as will be required by your Board during a period of one year from January first, 1916, we are pleased to quote you a price to publish said advertising in the Atlantic City Daily Press, of 10c. per line for the first insertion, and eight cents (8c.) per line for each subsequent insertion, each line averaging at least seven words, as provided by law. 30

We have made an investigation of the question of legal rates and our advices from various legal sources is to the effect that the legal advertising rate

as provided by the Legislature is absolutely mandatory in its provisions and that advertising published at any different rate, than that provided by the State law would result in such advertising having been illegally done, were a test made.

10 Realizing the importance of complying strictly with the State Law in this matter, solicitors for municipalities and other governing bodies throughout the State, are from time to time, advising that the Legislature intended the Act fixing the price of legal advertising to be mandatory and peremptory, as will readily be seen by the opinions enclosed herewith, one of which was rendered by the City Solicitor of Atlantic City, and the other by the Solicitor of Bloomfield, N. J., both of which were acted upon favorably by the governing bodies of these two cities.

20 We are going into this detail inasmuch as we feel positive that the Atlantic County Board of Freeholders desires to conform to the law of the State. We, of course, feel there should be no question of the Press being favored with your patronage, where the rate is fixed by law, and not by competition, inasmuch as it is an undisputed fact that the Press has a larger circulation in Atlantic County than any other newspaper. It must, therefore, necessarily render to the Board of Freeholders more service, for the same amount of money than is obtainable through the use of any other publication.

30 Very truly yours,
The Atlantic City Daily Press,
Per:—Press-Union Co.,
Albert J. Feyl, Treas.”

“January 11, 1916.

Printing and Stationery Committee,
Gentlemen:—As publisher of the ‘South Jersey

Star,' of Hammonton, Atlantic County, a weekly of nearly fifteen years' standing, I again bid the same figure as last year, and the year before, seven-eighths cent ($\frac{7}{8}$) per legal line, for all the advertising of the Atlantic County Board of Chosen Freeholders, during the year 1916. Not only is the rate a fair one to all concerned, as I charge the Board practically what a business man would pay for the same service, but it is just and proper that Hammonton, the second largest municipality in the County, should be represented in the Board advertising, especially as Hammonton is located at the extreme end of the County, compared to where the other advertising medium is located. Trusting we may again have the pleasure of handling your business, and promising you decided improvements in the 'Star,' I remain,

Sincerely,

Thos. B. Delker.

Copy of bid mailed at 11.30 A. M.
January 11, 1916."

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On motion, the bids were referred to the printing committee. Printing committee retired and Mr. Haines, chairman of the committee, reported that they favored that bids for legal advertising be awarded to the Atlantic City Review and the Atlantic City Press. Considerable discussion was had touching the matter and the opinion of the county solicitor was asked and he gave the opinion that the law required that legal advertising should be awarded to the papers that would secure the best results by advertising, not to the ones who should be the lowest bidders; that in his opinion, the purpose of the law was that the public should have notice of the purpose of the advertisement, and that to award the printing to a paper which might bid the lowest would be

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defeating the very purpose of the law. He also stated that the law required that the two papers should be of different political faith. After considerable discussion, "Mr. Johnson moved that all bids for legal printing be rejected and that they award the legal printing to two newspapers upon the sole theory of those which would give the best and widest advertisement, and of different political faith. Motion seconded and on roll call, the following members voted 'aye': Messrs. Ashmead, Banning, Barrett, Blair, Collins, Corsiglia, Doughty, Fulmer, Haines, Johnson, Ritson, Shackelford, Smith, A. B.; Smith, Ira T. B.; Smith, L. R.; Tallman, Willets, Fred W.; Winterbottom, Sam'l.; Webb, Geo., 19 'ayes.' Mr. Black and Mr. Osgood voted 'nays.' 2 'nays.' Mr. Hanselmann passed."

The motion of Johnson was adopted.

Mr. Johnson moved that the legal printing be referred to the printing and stationery committee to report back at this meeting. Carried.

The printing committee retired and reported back and Mr. Haines, chairman of the committee, moved that the bids for legal advertising be awarded to the Atlantic City Press and Atlantic City Review at the legal rate given in the bid of the Atlantic City Press.

On roll call to adopt the motion of Mr. Haines, the following members voted "aye": Messrs. Ashmead, Banning, Barrett, Blair, Collins, Corsiglia, Doughty, Fulmer, Haines, Hanselman, Johnson, Ritson, Ryon, Shackelford, Smith, I. T. B.; Smith, Lewis R.; Tallman, Winterbottom, Webb, 19 "ayes." Mr. Black voted "nay." 1 "nay" no passes.

The motion was adopted 1 "nay" 19 "ayes" no passes.

In witness whereof the clerk of said board has affixed his signature hereto attesting the same, and has

caused to be affixed the seal of the said Board of Chosen Freeholders of the county of Atlantic this first day of March, nineteen hundred sixteen.

Attest:

ROBERT PRASCH, (L.S.)
Deputy Clerk.

AFFIDAVIT.

(Filed February 19, 1916)

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

THOMAS B. DELKER, being duly affirmed according to law, upon his oath says:

That he is a resident of Hammonton, county of Atlantic and state aforesaid, and a taxpayer in the said county. 20

That the Board of Chosen Freeholders of the county of Atlantic advertised for sealed bids for the publication or printing of all public notices or advertisements authorized by the Board of Chosen Freeholders, including monthly and annual financial statements to be submitted at its meeting on January twelfth, nineteen hundred and sixteen.

That in response to said advertisement, bids were submitted by South Jersey Star, Frank Breder, Atlantic City Review, Atlantic City Daily Press and Atlantic City Union, and that the bids were as follows: South Jersey Star, seven-eighths cent per line; Frank Breder, six-eighths cent per line; Atlantic City Review, four cents per line for first insertion 30

and three cents per line for subsequent insertions; Atlantic City Press, ten cents per line for first insertion, eight cents for subsequent insertions; Atlantic City Union, ten cents per line for first insertion and eight cents per line for subsequent insertions.

That these proposals were referred to the printing committee and the minutes of said board show the following as the result: "Mr. Haines moved that the bid for legal advertising be awarded to the Atlantic City Review and Atlantic City Press at the legal rate of interest of ten cents per line as given in the bid of the Atlantic City Press."

Deponent further says that this motion was adopted by the vote of nineteen ayes and one nay.

Deponent further says that he is advised that there is a question as to the legality of this award because it was not awarded to the lowest bidder and because the amount of the award is in excess of the maximum allowed by law, and because the board has allowed a price greatly in excess of the amount bid.

THOS. B. DELKER.

Affirmed and subscribed to before me this 14th day of February, 1916.

(Seal)

WILBER R. TILTON,
Notary Public.

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REASONS.

(Filed March 18, 1916)

The prosecutor assigns the following reasons for setting aside the proceedings under review:

1. Because having advertised for bids and having received the same in compliance therewith the law cast upon the Freeholders the duty of awarding the contract to the lowest bidder.

2. Because the contract was not awarded to the lowest bidder.

3. Because the contract was awarded for a sum in excess of the amount permitted by law. 10

4. Because if the statute permitted the Freeholders to award a contract to other than the lowest bidder and for the sum prescribed by statute both the Freeholders and the bidders waived the benefit of the statute by asking for and submitting bids.

5. Because the action of the Freeholders asking for bids and that of the bidders in submitting same estopped them from invoking the statute touching legal rates for printing. 20

6. Because the contract was not awarded to newspapers of different political faith, both the Atlantic City Press and Atlantic City Review being newspapers of the Republican faith.

C. L. COLE,
Atty. for Prosecutor.

STIPULATION.

NEW JERSEY SUPREME COURT.

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| 10 | THOMAS DELKER, <i>Prosecutor,</i> vs. THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ATLANTIC, <i>et</i> <i>al.,</i> <i>Respondents.</i> | ON CERTIORARI. STIPULATION. |
|----|---|------------------------------------|

20 It is stipulated as follows:
 That no formal contract has been entered into between the county and the papers receiving the award; that the county collector distributes the work from time to time as needed and that the amount of the work to be given to the Atlantic City Daily Press during the year 1916 will exceed the sum of five hundred dollars.

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C. L. COLE,
Atty. for Prosecutor.
 E. A. HIGBEE,
Atty. for Respondents.

OPINION.

NEW JERSEY SUPREME COURT.

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| THE STATE, THOMAS DEL- KER, <i>Prosecutor,</i> VS. THE BOARD OF CHOSEN FREEHOLDERS OF ATLANTIC COUNTY, <i>et al.</i> , <i>Defendants.</i> | } | JUNE TERM, 1916. | 10 |
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Argued June Term, 1916. Decided November
 Term, 1916. 20

Certiorari Removing Award of Printing Contract.

C. L. COLE, for prosecutor.

ENOCH A. HIGBEE, for defendants.

Argued before JUSTICES SWAYZE, MINTURN and KALISCH.

PER CURIAM.

This is a certiorari reviewing the award of a contract for public printing by the Board of Freeholders of Atlantic County to the "Atlantic City Daily Press," and to the "Atlantic City Review," the two highest bidders for the work. The prosecutor bid for "The South Jersey Star" and was the lowest

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bidder. The board proceeded under the act of 1909, chapter 67, an act fixing prices for official advertising.

The prosecutor claims under chapter 342, L. 1912, which requires public advertising, and the awarding of the contract to the lowest responsible bidder, where the amount involved exceeds \$500 and giving the board the right to reject any and all bids when they consider it in the interest of the county so to do.

- 10 The act of 1909, C. S. 3762, fixes the fees which may be charged for official advertising, which we take it applies to advertising of an official character which the board is legally required to have performed. This left the board free to select the instrumentalities for the performance of the work, but limited their charges for the same to the fees fixed by the statute. This construction of the act eliminated the necessity for competitive bidding, and the fact that it was resorted to in this instance can have no bearing upon
- 20 the powers of the board or the intendment of the act. In other words, the board might have exercised a power of selection of the county printing agents who would be limited in their charges to the statutory rate, without the incidental routine of competition in the first instance. This construction of the act enables the two enactments to stand, as not inconsistent with the legislative intent as expressed in the act of 1909, since it may well be that the intention of the legislature was different in the two instances. In
- 30 the earlier act the intention manifestly was to fix a maximum rate for official advertising, while in the later act the obvious intention was to allow the price in all other contingencies than official work to be regulated by competitive bidding.

This upon familiar legal principles is the construction which should be sought, and enables the two acts

to stand as pieces of harmonious legislation by attributing to the legislature an intent to consistently deal with two different situations. The result is that the award of the contract at a figure much in excess of the statutory limitation must be set aside with costs.

RULE FOR JUDGMENT.

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NEW JERSEY SUPREME COURT.

THOMAS DELKER,
Prosecutor,
vs.
THE BOARD OF CHOSEN
FREEHOLDERS,
Respondents.

ON CERTIORARI.
RULE FOR JUDGMENT.

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This matter coming on to be heard at the June Term, 1916, of this Court in the presence of C. L. Cole, of counsel with the prosecutor, and E. A. Higbee, of counsel with the respondents, and the Court having heard the arguments of respective counsel and having considered the same together with the evidence, and being of the opinion that the proceedings under review should be set aside, 30

It is, on this tenth day of November, 1916, on motion of C. L. Cole, attorney for the prosecutor,

Ordered that the said proceedings be and they are set aside with costs.

On motion of

C. L. COLE,
Atty. of Proscutor.

A true copy,
WM. C. GEBHARDT,
Clerk.

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I, WILLIAM C. GEBHARDT, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this nineteenth day of December, A. D. nineteen hundred and sixteen.

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WILLIAM C. GEBHARDT,
Clerk.

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