



# JACKSON COUNTY STATE'S ATTORNEY

## Michael C. Carr, State's Attorney

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To: Keith Larkin, Jackson County Board Chairman  
All Members, Jackson County Board

Re: Legal Questions Regarding Health Insurance and Competitive Bidding

Dear Mr. Larkin and Members of the Board,

I have recently been asked a number of questions regarding Jackson County's ongoing health insurance needs, including whether or not bidding is required, the procedure and requirements for seeking bids on health insurance, and who may seek bids. If you develop further questions based on what is presented here<sup>1</sup>, please direct them to me and I will do my best to answer them in a timely manner.

### Is Competitive Bidding for Health Insurance Required Under the Counties Code?

The Counties Code provides that "any purchase by a county . . . of services, materials, equipment or supplies in excess of \$30,000, other than professional services, shall be . . . by a contract to the lowest responsible bidder after advertising for bids in a newspaper published within the county . . ." 55 ILCS 5/5-1022(a)(1). It further states that the requirement of competitive bidding "does not apply to contracts by a county with the federal government or to purchases of used equipment, purchases at auction or similar transactions which by their very nature are not suitable to competitive bids, pursuant to an ordinance adopted by the county board." *Id.* at 5-1022(c).

Unsurprisingly, I have found contradictory authority as to whether bidding out a health insurance contract is required under the Counties Code.

### *Bidding Is Not Required --*

In *American Health Care Providers v. County of Cook*, 265 Ill. App. 3d 919 (1<sup>st</sup> Dist. 1994), the Cook County sought to obtain health-care coverage for its employees. The county hired a consultant to determine a "request for proposals" to 26 companies. The request for proposals generally requested price quotations and advised the bidders that the contract would be awarded by the county board. American Health Care sued, arguing that the County had violated the Counties code by failing to engage in competitive bidding. The County, which had determined that health care contracts are not adaptable to the competitive bidding process, prevailed. *Id.* at 932.

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<sup>1</sup> Parts of this memo are borrowed and adapted from a memorandum I received via email by Clifford G. Kosoff of O'Halloran Kosoff Geitner & Cook, LLC, the firm that represents the Illinois Counties Risk Management Trust.

Likewise, courts in other states have held the insurance brokerage services fall within the “professional services” exemption. In *Daul Ins. Agency, Inc. v. Parish of Jefferson*, 489 So.2d 364 (La. App. Ct. 1986), the Louisiana Appellate Court interpreted a similar competitive bidding statute with a “professional services” exemption, and found that the services provided by an insurance agent are “professional services” because the agent identifies risks, recommends ways to reduce risks, designs a tailor-made comprehensive insurance program, and performs analyses to minimize costs while maximizing protection.

*Bidding Is Required –*

In *Compass Health Care Plans v. Board of Educ. of City of Chicago*, 246 Ill. App. 3d 746 (1st Dist. 1992), the Illinois Appellate Court found that contracts awarded to HMOs were subject to the competitive bidding statute because the HMO contract was a contract for the administration of an employee health care program in which employees select their own personal medical providers from a list of hospitals and doctors associated with the HMO. *Id.* at 750. The HMO did not provide any medical services, and its principal activities were insuring the enrollees against financial risks of health care costs, processing claims, and contracting with independent medical care providers for the provision of medical services to the enrollees of the HMO, none of which requires professional medical training. The court also found that although each HMO offers a different combination of doctors and hospitals, there is considerable overlap of providers, and most doctors and hospitals contract with several HMOs. *Id.* An expert testified in the case that HMO contracts were particularly adaptable to competitive bidding, and represented savings as high as 15-20% due to the level of competition in the marketplace. *Id.* The court found that the decision to contract with certain HMOs was “strictly a matter of numbers,” the four HMO plans with the largest enrollment of employees being retained. *Id.* at 752. The contracts were not awarded on a basis of professional skills, but rather based on the number of enrollees in each of the HMO plans offered.

In 2012, the Illinois Attorney General issued an opinion in response to an inquiry made by the Knox County State’s Attorney regarding whether the county was required to use submit its insurance to the competitive bidding process. The Attorney General stated:

[C]ontracts for insurance coverage do not generally involve the provision of services requiring a high degree of professional skill or judgment. As explained in informal opinion No. I-90-006, specifications for bids for insurance policies can be tailored to assure the provision of adequate, dependable coverage by the vendor. Further, although the services of an insurance broker or agency may be beneficial in assisting a county board to secure adequate health care and liability insurance coverage, insurance broker services do not generally involve a high degree of discretion, analytical skills, independent judgment, or the need for confidence, trust, or belief in the person rendering the services.

Att. Gen. Op. 1-12-006.

In a local trial court case, *Cherry Insurance Services v. County of Jackson* (1991-MR-1), Jackson County sought competitive bids for a health care brokerage service. Jackson County awarded the bid to a company that was not the lowest bidder and, after the close of bidding, allowed that company to alter the bid. The case was not litigated to a final result, but dismissed by stipulation after Jackson County paid a settlement to Cherry Insurance Services.

#### *Exceptions to Requirement to Bid Insurance*

There is an exception to the requirement to bid insurance and this is when counties or other government entities band together to self-insure as a group of public entities. This is why, for example, we are able to use the services of ICRMT without bidding for its services.

The Illinois Constitution provides the following:

- (a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.
- (b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.
- (c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities

IL Const. Art. VII § 10.

The Illinois Intergovernmental Cooperation Act specifically allows for certain types of intergovernmental agreements between public agencies, including joint water action agencies, 5 ILCS 220/3.1, joint action agencies for the disposal of waste, 5 ILCS 220/3.2, joint sewage treatment agencies, 5 ILCS 220/3.4, a regional juvenile detention authority to build a regional juvenile detention facility, 5 ILCS 220/3.7, and agencies to handle flood water prevention, 5 ILCS 220/3.9. It also allows public agencies to join with community college districts to form Local Economic Development Commissions. 5 ILCS 220/3.3.

The Intergovernmental Cooperation Act also specifically allows the public agencies to agree to jointly self-insure: “An intergovernmental contract may, among other undertakings, authorize public agencies to jointly self-insure and authorize each public agency member of the contract to utilize its funds to pay to a joint insurance pool its costs and reserves to protect, wholly or

partially, itself or any public agency member of the contract against liability or loss in the designated insurable area.” 5 ILCS 220/6.

### Who May Seek Bids?

On March 27, 2019 the Health Insurance Taskforce met for the first time to discuss ongoing issues with the expenses of the County’s current health insurance plan. At this meeting, the members of the taskforce decided it was desirable that the County seek competitive bids and that bids should be sought as soon as possible.

Shortly after the meeting, a question arose as to whether the Health Insurance Taskforce, which functions as an advisory board to the County Board, has the power to make a final decision and authorize an advertisement to run in a newspaper. The Taskforce, being a creation of the County Board that is not otherwise vested with any powers under law, does not have the power to make decisions that are binding on the County.<sup>2</sup>

Sincerely,

MICHAEL C. CARR  
Jackson County State’s Attorney

/s/Allison Mileur

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ALLISON MILEUR  
Assistant State’s Attorney  
Jackson County, Illinois

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<sup>2</sup> The Counties Code does not discuss the power of “advisory boards” or provide a definition. The School Code describes an “advisory role” as one in which individuals do not have voting or other decision making rights. See 105 ILCS 5/2-3.25a(b-5).