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EVANS & MERSHON  
ATTORNEYS AND COUNSELLORS AT LAW  
MIAMI, FLORIDA

W. I. EVANS  
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February 26, 1924.

Mr. Frank J. Pepper,  
Miami, Fla.

Dear Sir:           IN RE:   Biscayne Drainage District.

I understand that your Committee desires to be advised upon the following questions:

1. Are the bids which were submitted upon the 12th day of February, 1924, for the construction of drainage canals in Biscayne Drainage District in legal form and may either of said bids be accepted?

2. Is it proper to accept a bid for the construction of the drainage works within the district prior to the making of the assessment and prior to the issuance of bonds?

We advise you upon the above questions as follows:

1. We have inspected the specifications prepared by Biscayne Engineering Company, and upon which the bids submitted are based, and we find that the said specifications in paragraph ten thereof provide:

"Payments will be made monthly. A percentage of ten per centum will be reserved from each payment until completion of contract. Final payment to be made within ten days after the completion of the contract, and the acceptance of the work by the Committee."

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Section 1738 Revised General Statutes of Florida provides that the Board of County Commissioners may, during the progress of the work, make payment in installments on said work of not to exceed eighty per cent of the value of the work so done to be certified by the engineer in charge.

We are of the opinion that the Board of County Commissioners would not have authority to pay to the Contractor an amount equal to ninety per centum of the value of the work done in installments as is provided by the specifications. All of the bids submitted are based upon the specifications which are on file with the Board of County Commissioners. In our opinion neither your Committee nor the Board of Commissioners has the power to permit an amendment of the specifications or bids at this time, and if the contract is awarded, its provisions will have to conform with the provisions of the specifications. It is apparent that the Board of County Commissioners has not authority to enter into a contract in accordance with paragraph ten of the specifications. It is, therefore, our opinion that all of the bids received should be rejected, and that your Committee should recommend to the Board of County Commissioners that such bids be rejected.

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2. Section 1739 Revised General Statutes provides that after the canal has been ordered, but before letting the contract therefor, the Committee shall view the lands to be benefited by the canal as shown by the petition and plat presented to the Board of County Commissioners, and after the cost of construction is ascertained shall assess each parcel of land in proportion as it shall be benefited by such canal for all expenses that may be incurred in the construction of the canal including the interest charges, the expenses of the Committee and engineer and for condemnation proceedings, together with their estimate of the amount per acre for annual maintenance of such canal. The statute further provides that after such assessment roll is made and reported to the Board of County Commissioners, the said Board shall at once give notice by publication once a week prior to the next regular meeting that it will at the next regular meeting hear complaints from the owners or agents of any land affected. Section 1741 provides that before awarding the contract for the construction of the canal, the Board of County Commissioners shall issue and sell drainage district bonds for the total amount of the assessments less the interest charges.

Our construction of these statutes is that the assessment is to be based upon the estimate of the Committee as to the cost of



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constructing the canal. However, Mr. McCaskill has handed us a copy of a letter dated September 22, 1923, written by him to Messrs. Peck, Shaffer and Williams, of Cincinnati, Ohio, with reference to this matter. We are informed that Messrs. Peck, Shaffer and Williams are attorneys of high standing and specialize in rendering opinions upon the validity of drainage bonds. We also have before us the reply of Messrs. Peck, Shaffer and Williams to Mr. McCaskill's letter. These attorneys indicate that in their opinion the estimate of the cost of constructing the canal required to be made by the Committee is merely for the information of the Board of County Commissioners, and that the assessment cannot be made until after bids for the work have been received. They further state, however, that the contract cannot be awarded until after the assessment has been made and the bonds issued.

It is necessary that these matters be handled in accordance with the opinion of Messrs. Peck, Shaffer and Williams so as to insure their approval of the bonds when issued. It is advisable, therefore, that when you receive a bid based upon specifications prepared in accordance with the statutes under which you are operating that the bid be accepted subject to the sale of bonds, and that a provision be incorporated in the resolution of the Board of County Commissioners accepting the bid to the effect that a contract will be entered into with the bidder when the bonds shall

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have been sold.

It seems to us that in order to save time during the process of re-advertising for bids much work could be done in connection with the making of the assessment roll. In fact, the entire roll could be completed with the exception of extending the amounts assessed against each parcel of land in the district. The making of the assessment roll will be quite a tedious task, and it is advisable to begin work upon it at the earliest possible moment.

We have not had an opportunity since our employment to make the thorough investigation into the present status of the district which we desire to make. The writer has had a conference with Mr. McCaskill, and he has furnished us much information in connection with the matters which have preceded our employment. Within the next few days, we expect to have a complete transcript of all of the proceedings which have been taken up to this time in connection with the district, so that we may be thoroughly familiar with the affairs of the district, and be in a position to advise you as occasion presents itself upon the various questions which will arise.

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If any deeds for rights of way have been obtained, we should like to have those deeds placed with us for examination.

Very truly yours,

EVANS & MERSON,

By - 

E/Mc.