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***Non-enforcement administrative auctions in the Kingdom of
Poland (1842-1866). Practice in Piotrków County against the
backdrop of legislation***

SUMMARY

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The title of my doctoral thesis is: *Non-enforcement administrative auctions in the Kingdom of Poland (1842–1866). Practice in Piotrków County against the backdrop of legislation.*

The dissertation analyzes an issue not yet explored in either historical or legal literature. The primary objective of the paper was to present legal regulations regarding non-enforcement administrative auctions in the Kingdom of Poland in the period 1842–1866 and the practice of conducting such auctions.

The research covered: normative sources from the specified period, the literature, and practice¹. The files of the Polish Governmental Committee of Internal Affairs regarding the auctions, preserved in the Central Archives of Historical Records from 1810–1868, were reviewed². In addition, the practice of conducting auctions by local authorities was discussed on the example of the Act of the Head of Piotrków County of 1842–1866, made available in the State Archives in Łódź and the State Archives in Piotrków Trybunalski. Said files document the course of bidding proceedings conducted by administrative authorities in Piotrków County.

The research was also to investigate whether the practice was in accordance with the law in force at that time and to determine the reasons for holding auctions.

My thesis consists of five chapters, introduction and conclusion.

The first chapter presents legal regulations regarding non-enforcement administrative auctions held in the Kingdom of Poland between 1842 and 1866. Bidding as an important element of lawful business transactions was used to implement the tasks of public authority. The regulations stipulated that the administrative authorities were to carry out various types of auctions: for public contracts (works and deliveries) and for the lease or sale of public assets. The basic legal regulations regarding announcing and holding administrative auctions included two ordinances of the Administrative Council (Polish: *Rada Administracyjna*) of the Kingdom of Poland of 16/28 May 1833³ and of 3/15 September 1840⁴, and the decision of the

¹ For practices concerning preparation, course post-auction proceedings for court and administrative auctions, see P. Kamińska, *Z badań nad procedurą licytacji w Królestwie Polskim do 1875 roku*, „Studia z Dziejów Państwa i Prawa Polskiego”, Vol. XIX, Krakow 2016, pp. 215-218.

² AGAD, Complex No. 191, *Akta Komisyyi Rządowej Spraw Wewnętrznych tyczące się Licytacyów*, sign. 6225, 6226, 6227.

³ Decision of the Administrative Council of the Kingdom of Poland of 16/28 May 1833 [hereinafter referred to as Ordinance of the Administrative Council of 1833]; *Dziennik Praw Królestwa Polskiego*, Vol. XV, No. 57, pp. 230-264.

Organization Committee in the Kingdom of Poland of 19 September/1 October 1864⁵. In addition, the administrative authorities, such as the Government Commissions, the Central Welfare Council of Charities and the Management Board of the XIII District of Land and Water Communications, issued a number of provisions detailing the above legal acts⁶.

The second chapter contains the characteristics of bidding documents. Their formal elements are presented. Documents initiating the investment proceedings were examined, including an application for permission to carry out auctions, authorizing to hold auctions, performing preparations for the auction (bidding conditions, announcements of auctions), declarations (bids), registers of submitted declarations and bidding protocols. The legal requirements for the preparation of bidding documents and the elements of these documents in practice were analyzed. Last but not least, mandatory elements and additional elements were indicated.

The subsequent two chapters discuss the preparation and conduct of the bidding procedure. The stages of this procedure were reconstructed on the basis of regulations and practice documents.

The third chapter concerns the preparation of the auction. The following activities are described in sequence: task execution, application for a cost estimate, occurrence with a cost estimate for permission to carry out the auction, acceptance of the project with an indication of the need to carry out the auction, order to hold the auction, and finally, preparation for the auction (terms and bids).

In Piotrków County during the audited period, administrative authorities held auctions for a number of reasons. The most common were: the need to perform repairs, renovations or public works, the need to organize the delivery of items, the desire to sell unnecessary items or sell/lease public real estate and to provide benefits from the lease of public revenues.

⁴ Ordinance of the Administrative Council of the Kingdom of Poland of 3/15 September 1840 [hereinafter referred to as Ordinance of the Administrative Council of 1840]; *Dziennik Praw Królestwa Polskiego*, Vol. XXVI, No. 87, pp. 13–21.

⁵ Decision of the Organization Committee of the Kingdom of Poland of 19 September/1 October 1864; *Zbiór Przepisów Administracyjnych Królestwa Polskiego, Wydział Skarbu*, Vol. XX („O dobrach rządowych”), Warsaw 1868, pp. 373–377.

⁶ E.g. Ordinance of the Government Commission of Interior and Spiritual Affairs of 15/27 January 1843, No. 24103/3309; *Zbiór Przepisów Administracyjnych Królestwa Polskiego, Wydział Spraw Wewnętrznych i Duchownych*, supplement to Vol. III, Sec. I („Gospodarstwo miejskie”), Warsaw 1867, pp. 659–661; Ordinance of the Management Board of the XIII District of Land and Water Communications of 11–23 November 1859, No. 5959; *Zbiór Przepisów Administracyjnych Królestwa Polskiego, Wydział Komunikacji Lądowych i Wodnych*, Vol. II, Warsaw 1866, pp. 503–505, Ordinance of the Central Welfare Council of Charities of 28 April/10 May 1865, No. 1156; *Zbiór Przepisów Administracyjnych Królestwa Polskiego, Wydział Spraw Wewnętrznych i Duchownych*, Vol. II, Sec. III, „Zakłady dobroczynne”, Warsaw 1866, p. 443.

The fourth chapter presents the course of the bidding procedure, characterizing, in turn, the course of three types of auction: open-outcry (bids submitted out loud), sealed-bid (bids submitted by sealed declarations) and mixed (bids submitted both by sealed declarations and out loud). As a rule, sealed-bid auctions were preferred (in accordance with art. 1 of the Ordinance of the Administrative Council of 1833). There were exceptions, however, to this rule allowing open-outcry bidding. In practice, the vast majority of auctions were open-outcry bids. Regulations set out in the Ordinance of the Administrative Council of 1833 concerned solely sealed-bid auctions, but it was applied accordingly for open-outcry auctions as well.

The open-outcry and sealed bidding were both divided into three stages, namely: preliminary activities, course, and activities concluding the auction.

Local authorities most often held auctions in the office of the Head of Piotrków County and in town magistrates.

The last stage were the activities concluding the auction. A report was drawn up from the course of the proceedings, which confirmed the correct performance of the auction. After the auction, the commission expressed its position (opinion) of a formal nature. The last step was to send the documents of the bidding procedure, along with the auction protocol, to be approved by the higher authority (in this case, the Provincial Government or the Government Commission).

In practice, irregularities occurred during the announcement and holding of auctions. There were also cases of informal handover, despite the fact that the regulations provided for the obligation to carry out the auction.

The last, fifth chapter deals with the proceedings following the conclusion of the auction. It contains a description of the supervision of the administrative authority over the auction, i.e. the procedure in case of approval of the protocol of the auction by the higher authority and conclusion of the contract.

First, the higher authority (the Provincial Government or the Government Commission, depending on the value of the subject of the auction) approved the bidding report. For auctions whose value was less than PLN 3,000, the auction protocol was approved by the Government (within 14 days of the auction day), unless the Government Commission has stipulated otherwise, and by the Government Commission (within 1 month of the auction) for all auctions whose value exceeded PLN 3,000. In addition, town magistrates also approved bidding protocols. Subsequently, the higher authority sent the approved auction report to the local authority and recommended that it conclude a contract with the person who won the

auction. The local authority then called the winning bidder to appear in the administrative office with a view to concluding the contract.

Lease contracts and contracts for specific work (for specific-task and delivery) were found.

The winning bidder could waive the right acquired at the auction to third parties.

The outcome of the auction was binding for the winning bidder *ex nunc* – immediately after the declaration was opened, and *ex tunc* – only after the approval protocol was approved by the higher authority – for the government, municipality or institute (in accordance with Art. 44 of the Ordinance of the Administrative Council of 1833).

The procedure was also discussed for the following situations: refusal to approve the bidding protocol (suspension or cancellation of the auction), resignation by the winning bidder from the conclusion of the contract, and withdrawal from the contract.

Proceedings in the absence of bids were also presented. Regulations of the Ordinance of the Administrative Council of 1833 prohibited the acceptance of declarations made after the auction, even if they contained more favorable offers than the auctioned sum. Similarly, if the bid was not approved by the higher authority, the bids submitted after the auction should be rejected and a new auction should be held instead. Practice shows that declarations were made even after the date of the auction (on which the hammering took place), as well as after the unsuccessful bidding (outside of the auction). Administrative authorities usually did not accept declarations submitted after the auction period. Sometimes, however, declarations made after the auction were accepted.

It also happened that after the auction in which the winning bidder was not selected the administrative authority was to take over the role of entrepreneur.

In conclusion, it was indicated that the basic factor shaping the practice was legislation, which provided for detailed requirements regarding the preparation and conduct of the auction.

The procedure provided for triple approval of the supreme authority: 1) the project with an indication of the need to carry out the auction, 2) the bidding protocol and 3) the contract concluded by the administrative authority with the winning bidder. The higher authority (the Government Commission or the Provincial Government) supervised the bidding procedure.

The entire proceedings were of an administrative nature. The procedure was conducted on the basis of the provisions of administrative law (Ordinances of the Administrative Council of 1833 and 1840) and aimed to conclude a specific type of contract, in this case administrative. Subsequent administrative decisions translated into binding terms for the winning bidder.

However, the contract was drafted only after approval by the administrative authority. Thus, the bureaucracy retained full control over property dispositions concerning public treasury.

The majority of auctions were held in the open-outcry form. More frequent arranging of open-outcry auctions sprang from the low value of the subject of the auction (according to Art. 2 of the Ordinance of Administrative Council of 1833, open-outcry auctions could be held if the value of the item did not exceed PLN 1,000 and for chattel). In addition, if the Governmental Commissions considered that a greater benefit would be obtained by holding an open-outcry auction, they could authorize such bidding (in accordance with Art. 4 of the Ordinance of the Administrative Council of 1833). It can be assumed that another reason was associated with fewer formalities than in the case of sealed-bid auctions.

Most auctions had a winning bidder (as many as 58 cases out of 90 protocols), of which 50 were selected in the course of open-outcry auctions and 4 in sealed-bid auctions. Perhaps this is also the reason why the authorities were more willing to hold open-outcry auctions.

As for the assessment of administrative auctions held in Piotrków County between 1842 and 1866, it is not an easy task. On the one hand, administrative authorities used this institution when managing public property in order to obtain the best offer and rationalize public spending. On the other hand, the procedure of bidding was associated with numerous formalities, the failure of which resulted in the invalidity of the bidding procedure. Administrative authorities applied strictly to the provisions concerning auctions.

In the assumption of the legislator, the auction was to serve the public interest. The bidding procedure was to ensure fair competition and prevent corruption. The advantage of introducing an administrative procedure was to ensure proper course of the auction by administrative authorities (they could supervise the course of the auction, but also the post-bidding proceedings). Therefore, it was about protection against irregularities in the proceedings and abuses on the part of bidders or officials. The disadvantage of this solution was excessive formalism, excessive length of proceedings, as well as its cost-effectiveness in relation to the informal handover of an undertaking (costs related to the announcement and holding of the auction were incurred by the winning bidder).

On the basis of the practice outlined, it was possible to show the procedure of bidding from the perspective of a specific county. Rich normative material and extensive practice files allowed for drawing general conclusions regarding non-enforcement administrative auctions conducted by local authorities.

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