

## Opinion No. 56-6366

January 19, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. K. R. Hafen, Purchasing Agent, New Mexico College of Agriculture and Mechanic Arts, State College, New Mexico

You have asked the opinion of this office on the question as to whether or not a Texas corporation maintaining feed warehouses in two cities within New Mexico and in which warehouses it keeps inventories upon which it pays taxes and makes deliveries therefrom to its customers is a resident firm within the meaning of § 6-5-3, N.M.S.A., 1953. That section, in part, provides:

"All purchases of goods made by any purchaser to which this act is applicable shall be from manufacturers, distributors or retail establishments having or maintaining in the regular course of business merchandise inventories within the state upon which taxes are paid, provided, however where no facilities are available for the purchase of any particular goods within the state or where the same may be purchased at a saving of more than 5%, such goods may be purchased outside of the state."

It seems to me that the business concern which you ask about comes within the definition set out in the above statute. Nowhere in the statute is it required that the business concern have its principal place of business in this State and nowhere in that statute can be found the requirement that it be a local corporation. All that is required is that the manufacturer, distributor or retail establishment have and maintain in its regular course of business merchandise inventories in this state upon which taxes are paid. The information which you present regarding the business concern in question indicates that it meets all the requirements of the statute.

It is, therefore, the opinion of this office that you may consider this business concern as an instate bidder.

I am not unmindful of the possible consequences of holding as I do above. Conceivably an out-of-state concern could, under the rationale of this opinion, establish merchandise inventories in this State which would in reality be a sham and only for the purpose of getting around the provisions of the statute above. Each case, of course, will depend upon its facts and, concerning each, a determination would have to be made as to whether or not such a business concern would in reality be maintaining its inventories in this State in the "regular course of business". I cannot say from the information which you have presented that the business concern which you ask about is not engaged in a "regular course of business" and, if you determine that it is, you are at liberty to treat it as a resident firm.

I am enclosing a copy of Attorney General's Opinion No. 3174, dated June 9, 1939, for your further information upon this matter.

I hope that the above helps answer your inquiry.

By Santiago E. Campos

Assistant Attorney General