

## Opinion No. 56-6410

March 20, 1956

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

**TO:** Mr. C. F. Horne, State Purchasing Agent, P. O. Box 749, Santa Fe, New Mexico

You have asked the opinion of this office as to whether or not Section 6-7-3, N.M.S.A., 1953, applies to contracts of services of specialized repairmen or technicians who repair state property, as, for example, those people hired to service typewriters, adding machines and similar types of equipment.

I note that you state that you are familiar with Opinion No. 4664, rendered by this office on February 19, 1945, wherein this office held that the statute applied to contracts for the improvement or repair of heavy highway equipment. We cannot see any difference between that situation and the one which you present here. It seems to us that the reasoning there applies with equal force to the type of services which you ask about. As you know, Section 6-7-3, provides:

"The state purchasing agent, except as in this act (6-7-1 to 6-7-13) provided, shall purchase for each department all supplies, including such supplies as are common needs of each department, and shall make and execute for the state and each department thereof all contracts for buildings and the repair thereof, or for any improvement upon any property of the state or any department thereof, and every character of service, other than personal services, usually provided for by contract."

It is noted that the statute requires that the State Purchasing Agent shall execute for each department all contracts for the repair of any property of the State as well as a contract for every character of service, other than personal services. Contracts for repair of property are covered by the statute and this type of contract, we conclude, is not in the nature of personal service. The term "personal services" as used in this statute is rather difficult to define. The Legislature did not specifically do so. However, we believe that when the Legislature excepted "personal services" from "every character of service, . . . usually provided for by contract" it had the following distinctions in mind.

". . . In ordinary usage the term 'service' has a rather broad and general meaning. It includes generally any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed. The general definition of 'service' as given in Webster's New International Dictionary is 'performance of labor for the benefit of another'; 'act or instance of help, or benefit' . . ." Creameries of America vs. Industrial Commission, 102 P. 300.

And therefore "personal service" distinguished from "service" generally indicates that the act done for the benefit of another is done **personally** by a particular individual. Creameries of America vs. Industrial Commission, supra. Examples of the two types of

services may be helpful in understanding the dividing line between the two. As an example of personal services may be cited the services of a stenographer. The hiring of such a person contemplates that she and no other will perform the services. Another example perhaps would be the hiring of a doctor or a lawyer. Generally when these persons are hired, it is contemplated that the particular individual will perform the service desired. On the other hand an example of a service other than personal service could well be the hiring of someone to repair your automobile. Generally when one takes his car to a garage one is not interested in the fact that a particular mechanic repair it. It is ordinarily intended that any one of the garage employees may work on it. The important consideration being that the automobile be repaired and, so also would be the case, where for example a firm of typewriter repairmen is employed to repair a typewriter or an adding machine. Ordinarily no particular interest is had in who performs the work so long as the resulting repair can be secured. We know that there are exceptions to all of the examples cited above. The hiring of a typewriter mechanic or repairman may well come within the definition of personal services when the employer desires that a specific individual perform the work. However, these exceptions do not detract from the general definition and examples above.

We see nothing which would prevent a department from securing bids from a repair concern for any of these services on a bid based on an hourly basis. Thus, if the various departments desire to contract with any given business concern for repair of their machines for a stated period of time, they may do so if they obtain bids for work based on an hourly rate. Thus the contract could run for a considerable period if the bid of any given concern was accepted when that bid is made on an hourly rate base.

It is, therefore, our opinion that contracts for these services cannot be procured directly through the department or agency, but must be entered into by you, the State Purchasing Agent for the State or agency.

We agree with you that in many instances the letting of these contracts, as required by this statute, may be inconvenient and, perhaps, sometimes impractical. However, the breadth of the statute covers these and this office cannot, by construction, determine otherwise.

We hope this answers your inquiry satisfactorily.

By: Santiago E. Campos

Assistant Attorney General