

Opinion No. 56-6441

May 11, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

A municipality in this State has secured three bids on the purchase of printed supplies. One of the bids is from a firm in this State, the other two are bids from out of State firms. The bid submitted by the local bidder is higher than those submitted by the out of State bidders. In connection with this situation, and the purchase of printed supplies generally, you ask for our opinion on the questions:

"(1) Whether or not the City should award purchase contracts on the basis of a 5% preference being given to in-state firms."

"(2) If your answer to the above question is that a 5% preference should be allowed to in-state firms, can the City of Albuquerque award a contract to the in-state firm when the 5% preference makes the bid of the in-state firm and the bid of the out of state firm exactly equal?"

From your questions above, I gather that you are under the impression that contracts for printing or printed supplies come under the Public Purchases Act of 1939, as amended, (Chapter 233, Laws of 1939, and Chapter 124, Laws of 1943) and specifically Section 3, Chapter 233, Laws of 1939, (Section 6-5-3, N.M.S.A., 1953). The 5% preference to in-state firms contained in Section 6-5-3, does not apply to printing and printed supplies. Printing and printed supplies are covered by a specific Act, Chapter 168, Laws of 1937.

This office has on a prior occasion ruled that Chapter 233, Laws of 1939, does not repeal Chapter 168, Laws of 1937. Attorney General's Opinion No. 3366, dated December 20, 1939. And thus the latter regulating printing and printed supplies stands in full force and effect. This is so at least insofar as municipalities are concerned. See *State vs. Valdez*, 59 N.M. 112.

Regarding Chapter 168, Laws of 1937, this office has previously ruled that Sections 1 and 2 of that Chapter (§ 10-1-8 and 10-1-9, N.M.S.A., 1953) when read together indicate that where the printing or printed supplies are "ordinarily obtainable" in this State, it is the duty of the department to award the contract for such printing to a New Mexico firm or firms notwithstanding that lower bids from out of state bidders for the same materials have also been received. See Question 1 and answer thereto in Attorney General's Opinion No. 6382, a copy of which is enclosed for your information. You will note the distinction discussed in that opinion regarding printing or printed supplies not "ordinarily obtainable" in New Mexico and those which are "ordinarily obtainable" from New Mexico firms. Those "not ordinarily obtainable" within the meaning

of Section 10-1-9, are those which would have to be obtained by subletting the contract to non-New Mexico firms. Conversely, those "ordinarily obtainable" would be those which are processed or manufactured in this State.

Your questions are thus answered as follows:

Question No. 1: The 5% preference does not apply to printing and printed supplies as concerns municipalities, and the municipality is under a duty to award the contract to the instate bidder if the supplies are "ordinarily obtainable" from him.

Your second question is answered by our answer to Question No. 1.

By: Santiago E. Campos

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