

Opinion No. 57-147

June 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Mr. Edward M. Hartman, State Comptroller, State Capitol Building, Santa Fe, New Mexico

QUESTIONS

QUESTIONS

Can Sandoval County pay the sum of \$ 215.50 for election supplies furnished said county at request of County Clerk inasmuch as no bids were secured for such supplies?

CONCLUSION

Yes.

OPINION

ANALYSIS

It is our understanding that the charge was made by the company which received and contract from the Secretary of State to print the official supplies for the last general election which supplies the Secretary of State was required to furnish to the county clerks under Section 3-3-20, N.M.S.A., 1953. The charge is a result of the county clerk's agreement with the printing company to have that company print the names of the candidates on the pages of the Tally Books as per Section 3-3-22, N.M.S.A., 1953 Compilation.

We must consider whether the Public Purchases Act (§ 6-5-4, N.M.S.A., 1953 Compilation) applies to this particular transaction in such manner that the county can avoid the payment of this debt.

First it should be pointed out that this printing company would be the only party which actually could print the name of the candidates on the Tally Books. The very nature of these books would preclude the printing of the candidates' names in the books after they are placed in the hands of the county clerk for distribution. The county clerk is given the duty of placing the names in the Tally Books (§ 3-3-23) either printed or written. Under the circumstances here presented, the securing of bids would be a useless gesture for only one would actually be in a position to perform the job as a result of already having secured a state contract through a bid.

The law does not require useless acts just for sake of form, and if bids were here required, it could only be for the sake of form. The Public Purchases Act (§ 6-5-4) provides that bids are not required in case public interest would be best served by not having such bids and when it is impracticable to obtain bids -- allowing in such case the approval of State Board of Finance -- to substitute for the bid requirement. We believe that the situation here presented is even beyond this exception. It is outside the requirements of the Public Purchases Act because in this particular situation, the printing company having the state contract for printing these supplies was the only one who could do the printing required by this county clerk. We conclude therefore that the county can legally pay this charge.