

## **Opinion No. 57-53**

March 15, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mrs. Georgia L. Lusk, Superintendent of Public Instruction, State Capitol Building, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

Are members of boards of education permitted to sell to the schools over which they have jurisdiction when the provisions of the Public Purchases Act are followed?

#### ANSWER

Yes, so long as the sale is in the regular course of the sellers business.

### **OPINION**

#### ANALYSIS

The reason for your request arises by virtue of a repugnancy between Section 6-5-6, N.M.S.A., 1953 Compilation, which permits a board member to sell to schools over which his board has jurisdiction when the goods purchased are sold in the regular course of business or upon competitive bids of not to exceed the regularly established prices, and when the member receives no compensation or reward on account of the transaction other than from the profits of such business, and Section 73-8-15, N.M.S.A., 1953 Compilation, which prohibits a school board member from selling to schools under the jurisdiction of his board under any circumstances.

Thus, a question of statutory interpretation is presented which has heretofore resulted in conflicting opinions out of this office.

In Attorney General's Opinion No. 4272, dated April 21, 1943, Attorney General's Opinions Nos. 3176, 3209 and 3605 were overruled. We feel that the best way to approach a solution of this problem is first to review the various opinions in chronological order.

Opinion of the Attorney General No. 3176, dated June 17 1939, merely held that the 5% preference in favor of New Mexico merchants set out in the Public Purchase Act did not apply where the purchase was \$ 200 or less in amount. Accordingly, it was not necessary that Opinion No. 3176 be overruled by Opinion No. 4272.

Opinion of the Attorney General No. 3209 was concerned with the question of an alderman selling goods to his city through a firm in which he was a member, and only mentioned what is now Section 73-8-15, supra, by way of dicta.

The opinion which first actually held on the question at hand was Opinion of the Attorney General No. 3605, dated August 24, 1940, in which the Honorable Filo M. Sedillo held that what is now Section 73-8-15, supra, was still in full force and effect despite the provision of what is now Section 6-5-6, supra, on the theory that repeals by implication are not favored.

On April 21, 1943, Opinion of the Attorney General No. 4272, was submitted which was in direct conflict with Opinion of the Attorney General No. 3605. It held that what is now Section 73-8-15, supra, was repealed by implication by Section 6-5-6, supra, and that school board members could sell to their schools so long as, of course, the provisions of the Public Purchases Act were followed. The Honorable Edward P. Chase reasoned that there was a repeal by implication inasmuch as the Public Purchases Act was a broad general statute which occupied the field, and he further reasoned that he did not see how the Legislature intended that school boards should be bound by the other provisions of the Public Purchases Act, and not be governed by that Act as to commercial dealings between board members and the schools.

Opinion of the Attorney General No. 5014, dated April 28, 1947, held that Section 73-8-15, supra, did not prohibit sales by teachers to pupils but did prohibit sales by teachers to schools. The Public Purchases Act was not even cited, but we venture to say for the reason that teachers are not defined as purchasers within the meaning of the Public Purchases Act.

Opinion of the Attorney General No. 5400, dated August 22, 1951, while it cited Opinion No. 4272, did not pass upon a conflict, if any, between the two statutes with which we are concerned. Opinion No. 5400 simply dealt with the question of what was a general course of business within the meaning of Section 6-5-6, supra.

Thus, the problem reduces itself to reconciling Opinion of the Attorney General No. 4272 and Opinion of the Attorney General No. 3605, which are the only two opinions which can be said to be in direct conflict. One of them must be overruled. It is true, as stated by Attorney General Sedillo in Opinion No. 6305, that repeals by implication are not favored in New Mexico. His reasoning is absolutely sound and requires no citation of authority to support the same as a general proposition. Nevertheless we feel that there is a repugnancy, and accordingly a repeal by implication of Section 73-8-15 by Section 6-5-6, supra, **insofar as the question at hand is concerned**. While repeals by implication are not favored, nevertheless they can and do occur.

While not concerned with the precise question at hand **State vs. Valdez**, 59 N.M. 112, 279 P. 2d 868, dealt with the question of poignancy between the Public Purchases Act and the State Purchasing Agent's Act as applied to purchases by a state agency. The basic question for decision in the **Valdez** case, supra, was whether a state agency in

making purchases should follow the Public Purchases Act or the Purchasing Agent's Act. Both statutes covered the question of purchases made by a state agency. Admitting that the doctrine that repeals by implication are not favored, the Court in the **Valdez**, case, supra, held that it is equally true that where two statutes have the same object and relate to the same subject, if the latter is repugnant to the former, the former is repealed by implication **to the extent of the repugnancy**, even in the absence of the repealing clause in the latter act. Section 73-8-15, supra, was first enacted in 1923: Section 6-5-6, supra, was first enacted in 1939. Reasoning from **the Valdez** case, supra, it is our opinion that the two statutes have the same object, and relate to the same subject, and that accordingly they are repugnant, insofar as the instant case is concerned, and the latter statute must prevail. It should be noted that **State vs. Valdez**, supra, had not been decided at the time of Opinion of the Attorney General No. 3605.

Accordingly, members of school boards may sell to schools under the jurisdiction of their boards, so long as the provisions of the Public Purchases Act are complied with, which includes purchases made in the regular course of business or upon competitive bids of not to exceed the regularly established prices and when such members receive no compensation other than from profits from their business. For an elaboration of the term ". . . regular course of business . . ." you are referred to Opinions of the Attorney General No. 4272 and 5400.