

**Opinion No. 59-134**

September 2, 1959

**BY:** HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Dante Vaio State Purchasing Agent State Capitol Santa Fe, New Mexico

{\*205} This is written in reply to your recent request for an opinion on the following question:

Is the State Employment Security Commission subject to the State Purchasing Act and therefore under the jurisdiction of the State Purchasing Agent?

In answer to your question, it is my opinion that:

Yes, the Commission is subject to the State Purchasing Act and therefore subject to the jurisdiction of the State Purchasing Agent.

The sections of the statutes which control the answer to your question are Section 6-7-1 and Section 6-7-3, N.M.S.A., 1953 Compilation. Section 6-7-1 reads in part as follows:

"The word 'department' as used in this act (6-7-1 to 6-7-13) shall mean any state department, office, board, commission, bureau, state institution, or other state agency . . . now existing or which may hereafter be created by law, **which expends any money derived in whole or in part from taxation or from grants or donations from the government of the United States.**" (Emphasis Supplied)

It is clear that the Employment Security Commission meets the requirements of this section of being a state commission since it is created by state statute to function as a state agency to administer the unemployment compensation law. The question then resolves itself into the determination of whether {\*206} this commission meets the requirement of the above quoted section -- e.g. that of expending money derived from taxation or from grants or donations from the Federal government. This commission meets this requirement in that it receives most, if not all of its funds from the Federal government. Since it meets the true requirements of the above section, it is subject to the State Purchasing Act.

Section 6-7-3, N.M.S.A., 1953 Compilation, provides that the State Purchasing Agent shall purchase all supplies and make all contracts for all "departments" as the word is defined in the State Purchasing Act. Since the Employment Security Commission is a department within the meaning of Section 6-7-1, it is therefore subject to the jurisdiction of the State Purchasing Agent by virtue of Section 6-7-3, N.M.S.A., 1953 Compilation.

It should be pointed out that this decision will not conflict with any Federal regulations applicable to the Commission inasmuch as the Social Security Board has promulgated

a regulation (No. 4261) which permits states to provide additional purchasing requirements for such commissions handling Federal funds. When the Federal requirements are more strict than the State's requirements, there would be no conflict either since the lesser state requirement would be satisfied in meeting the stricter Federal requirement. In so holding, any portion of Attorney General's Opinion No. 4344, dated July 27, 1943, which conflicts with this decision is expressly overruled.

By: Boston E. Witt

Assistant Attorney General