

Opinion No. 59-165

October 15, 1959

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

TO: Mr. Dan Sosa, Jr., District Attorney Third Judicial District Second Floor /- Court House Las Cruces, New Mexico

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

"Can the County Commissioners under Chapter 117, Laws 1951, at page 301, which is codified as Section 6-5-4, N.M.S.A., 1953 Comp. (PS), obtain the services of a fiscal agent in a bond issue to handle the matter for them without obtaining bids when under Section E they feel it would be impractical to obtain bids for professional services."

In answer to your question, it is our opinion that: Yes, the Commissioners may make such a contract without the bidding process.

The question which you ask can be resolved by reference to the statute cited by you. Section 6-5-4, N.M.S.A., 1953 Comp. (PS) reads in part as follows:

"A. Purchases, or **contracts for materials or labor** or both materials or labor to be furnished or improved . . . shall be made . . ." (Emphasis Supplied)

The question then resolves itself into whether a contract to hire a fiscal expert to handle a bond issue is a contract for labor within the meaning of the above cited section. The Supreme Court of New Mexico has never had occasion to define the word "labor" within the context of the public purchases act; the only construction of this word being in cases involving lien and labor statutes. Other states having similar purchasing statutes have, however, construed this word. The Supreme Court of New Jersey in **Heston v. Atlantic City**, 93 N.J.L. 317, 107 Atl. 820, while construing the word "labor" in its purchasing statute, had this to say:

". . . as we apprehend the services to be rendered under this resolution [hiring firm of auditors] were of a character involving peculiar professional education and experience, which invariably have differentiated their possessor in the industrial, economical and social environment of life, from one possessed only of the capacity to furnish work and labor as those terms are commonly accepted. Such services are comparable in character with the special services of counsel, the employment of a physician, or like expert service in the discharge of municipal administrative requirements; and while, generically, all such persons are engaged in work and labor, the {*258} ordinary mind, untrammled by the niceties of phraseology and etymology, would find it difficult, even in the present liberal segregations of economic life, to change the acquired meaning that custom and time have accorded these words."

This position is taken by the Supreme Court of North Dakota in **Bratten v. Olson**, 28 N.D. 235, 148 N.W. 829 where in construing a purchasing statute similar to New Mexico's said:

"The word 'labor', when used in a similar context to that furnished by the statute before us, has, as we believe, never been held to cover and include expert or semi-professional services such as those furnished by lawyers, doctors, chemists, consulting engineers, and expert accountants. (Citing Authorities)"

We are therefore of the opinion that professional services such as are contemplated in your question are not labor within the meaning of Section 6-5-4, N.M.S.A., 1953 Comp. (PS) and therefore, the bid procedure outlined in that section need not be followed in such a case.

Boston E. Witt

Assistant Attorney General