

## Opinion No. 60-207

October 28, 1960

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

**TO:** Mr. Richard T. Whitley Assistant District Attorney Eighth Judicial District Clayton, New Mexico

### QUESTION

#### QUESTIONS

1. May school teachers sell merchandise to a school for which he teaches when such sales is in accordance with the Public Purchases Act?
2. May a school purchase in-insurance from an agency that has as one of its principal stockholders a teacher employed in such school system?

#### CONCLUSIONS

1. Yes.
2. Yes.

### OPINION

#### {\*620} ANALYSIS

At the outset, it should be noted that Opinion of the Attorney General No. 57-53, dated March 15, 1957, held that Section 6-5-6, N.M.S.A., 1953 Compilation repealed by implication Section 73-8-15, N.M.S.A., 1953 Compilation which prohibited teachers from selling to their employers or from being in any manner interested in a firm doing business with their employers. This leaves Section 6-5-6, supra, as controlling on this subject at the present time. That section reads:

"No purchaser shall be or become personally financially interested, either directly or indirectly, in any purchase or contract covered by this act, and no purchaser shall act as agent for any person, firm or corporation in selling goods to {\*621} or entering into a contract with any purchaser, **provided nothing herein contained shall prevent purchases being made from any established concern, firm or corporation doing a general business in which a member of a board, commission, governing body, official, agent or employee, to which this act is applicable, is interested when the goods purchased as provided in this act [6-5-1 to 6-5-7] in the regular course of business or upon competitive bids at not to exceed the regularly established retail or list price and when such member or official receives no compensation or**

**reward on account of the transaction other than from the profits of such business."** (Emphasis Supplied)

The above opinion held that members of boards of education can sell to the school system if the requirements of the above section are met -- that is, the person's business, or the business in which he has an interest, does general business in New Mexico and the goods are purchased in the regular course of business or upon competitive bids and otherwise made in conformity with the Public Purchases Act. We feel that this holding applies with equal force to the questions you have asked. There is less objection to a teacher selling to the school system than there would be to a member of the board selling to the school system. A member of the board is normally one of several who make the decisions of what to purchase and from whom. A teacher would not normally be involved in this decision-making process.

We are of the opinion, therefore, that a teacher may sell or a business in which a teacher is interested may sell to the school system if the requirements of the Public Purchases Act, particularly, Section 6-5-6, are met.

By: Boston E. Witt

Assistant Attorney General