

Opinion No. 61-94

October 2, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Robert D. Castner, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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May the Town of Bernalillo legally contract for police protection service for an emergency one-month period without requiring and receiving formal bids for this service?

CONCLUSION

See analysis.

OPINION

ANALYSIS

We would like to point out first that the Town of Bernalillo is governed by the Public Purchases Act (Section 6-5-1 through 6-5-8, N.M.S.A., 1953 Compilation) rather than the State Purchasing Agent Act (Section 6-7-1 through 6-7-14, N.M.S.A., 1953 Compilation) in contracting for labor and materials. This is because municipalities are expressly exempt from the provisions of the State Purchasing Agent Act. Section 6-7-1, supra; see **State v. Valdez**, 59 N.M. 112, 279 P. 2d 868. For this reason Chapter 54, Laws 1961, which added a provision to the State Purchasing Agent Act relative to certain types of contracts, and which is referred to in your opinion request, has no applicability insofar as the Town of Bernalillo is concerned.

The factual situation giving rise to this question is that the Town of Bernalillo is faced with the problem of being unable to attract qualified personnel to serve as police officers due to the low salary scale for such positions. Consequently, the Town Council of this municipality desires to contract with a private firm for police protection services for a one-month period without advertising for bids. During this time, the Council proposes to advertise for bids for the supplying of this service for the ensuing one-year period.

There are two avenues open to the Council by which this problem can be resolved. Section 6-5-4 (D), N.M.S.A., 1953 Compilation (P.S.) provides that if the municipal governing body finds that it is necessary for the preservation of life and property to make an expenditure in excess of \$ 1,000 (and in this case the services for one month

will cost approximately \$ 1,250) before the time required for publication of notice for bids, the governing body may by resolution unanimously passed, declare that an emergency exists and may enter into the contract without publication of notice for bids. However, the governing body must **obtain** three bona fide written bids. "If three such bids cannot be secured the purchaser may . . . enter into the contract with the approval of the state board of finance." Section 6-5-4 (D), supra.

In the first instance then the Town Council should proceed as follows: (1) determine whether an emergency exists, (2) if a determination is made that it does, the Council should seek three bids for the one-month service even though no publication of notice for bids is made, and (3) if three bids cannot be obtained, the Council should seek Finance Board approval for entering into the contract without bids. Obviously, in the interest of time the Council should seek these three bids prior to the next Board of Finance meeting to be held October 9, 1961.

If it develops that it is impracticable to obtain bids for the one-month service, it would seem reasonable to assume that the same problem will be present in the case of the proposed one-year contract for such services. Should such be the situation, the Council could then proceed under Section 6-5-4 (E), N.M.S.A., 1953 Compilation (P.S.) in regard to the one-year contract. This Section provides that "where the public interests will be better served and where it is impracticable to obtain bids . . . the purchaser shall secure the written approval of the State Board of Finance for . . . entering into such contracts without competitive bids."

By following these statutory procedures it appears that the problem faced by the Town of Bernalillo can be resolved expeditiously.