

## Opinion No. 62-26

January 31, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

**TO:** Mr. Bill Hendrix, State Purchasing Agent, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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Is there conflict between Sec. 6-7-8, 6-1-7.1 and 6-1-8, N.M.S.A., 1953 Comp., regarding disposal of surplus property?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

In Attorney General's Opinion No. 58-76, April 8, 1958, citing Opinion No. 4560, August 11, 1944, we pointed out that the language of Sec. 6-7-8, N.M.S.A., 1953 Comp., granting the State Purchasing Agent powers to sell certain property was a **permissive** power, and no duty or requirement was imposed upon any state agency to place property in the hands of the Purchasing Agent for disposal.

We did not specifically consider what authority the Purchasing Agent possesses regarding the transfer of supplies between departments. The pertinent language of Sec. 6-7-8, N.M.S.A., 1953 Comp., reads:

"The purchasing agent shall have power to transfer any supplies contracted for from any department where they are not needed to any other department where they are needed, and to direct the proper charges and credits to be made in the appropriations of the departments concerned. He shall also have the power to sell at private sale any surplus or unneeded supplies or property in his hands owned by the state or any department thereof, at a price not less than was paid for the same or may sell the same for less than cost thereof, to the highest and best bidder for cash, after advertising the same in the manner provided by law for the sale of personal property upon execution, and shall deposit the money received therefor to the credit of the department or departments for and on account of which such unneeded supplies were purchased. He shall at all times keep in his office a current inventory of all movable equipment owned by the state."

The term "supplies contracted for" means, in our opinion, supplies ordered but not delivered. With such an interpretation, the section as a whole has a comprehensive, practical and logical meaning.

In other words, when a state agency has unneeded supplies in stock or on order, the Purchasing Agent is empowered to sell such surplus supplies to another agency or to the public and make appropriate credits in the accounts of the agencies concerned.

But whether the supplies are on order or in stock, the language of the section is permissive insofar as the powers granted the Purchasing Agent is concerned. Thus, the agency concerned is under no duty to place surplus supplies in the hands of the Purchasing Agent for disposal, but if they do, he may dispose of or transfer them according to the provisions of the section.

Section 6-1-7.1, N.M.S.A., 1953 Comp. (PS), on the other hand, gives a state agency or local public body the authority to directly dispose of surplus property where the value is \$ 50.00 or less or where the property is uneconomical or unsafe, after the body specifically adopts findings to that effect.

Section 6-1-8, N.M.S.A., 1953 Comp. (PS), gives to "Any department, commission, agency or institutional board of this state, or local public school district" the power to sell directly real property and personal property in excess of \$ 50.00 in value subject to approval of the State Board of Finance.

Summing up, if a state agency or department wishes the Purchasing Agent to dispose of its surplus property, he may do so. If the agency wishes to dispose of such property itself, it may do so in accordance with the provisions outlined above.