

Opinion No. 62-66

May 28, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt,
Assistant Attorney General

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

QUESTION

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May the various municipalities and other political subdivisions of the State make their purchases under the State Purchasing Agent's contract?

CONCLUSION

No.

OPINION

ANALYSIS

From 1939 to 1943 the Public Purchases Act (Sections 6-5-1 to 6-5-9, N.M.S.A., 1953 Compilation, as amended) governed all questions arising with respect to purchases made by the State or any of its political subdivisions.

In 1943 the Legislature passed the State Purchasing Agent's Act (Sections 6-7-1 to 6-7-13, N.M.S.A., 1953 Compilation, as amended). This act repealed the Public Purchases Act by implication, **except as to the specific agencies excepted from the State Purchasing Agent's Act**, (See **State v. Valdez**, 59 N.M. 112, 279 Pac. 2 868) and which are listed in Section 6-7-1 of the act, set out as follows:

6 - 7 - 1. "Department" and "supplies" defined. -- 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, excepting the judicial branch of government, and **excepting counties, school districts and municipalities**, 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 added)

Since the Legislature specifically excepted municipalities and counties from the State Purchasing Agent's Act, **all purchasing by these political subdivisions is still governed and controlled by the provisions of the Public Purchases Act, as amended**. There is no authority that can be found in the Public Purchases Act which

would provide for participation in the State Purchasing Agent's contracts by municipalities and counties. Their purchasing, particularly with respect to classification, bids and advertising, is strictly governed by Section 6 - 5 - 4, N.M.S.A., (P.S.) which differs in many respects from the comparable statute (Section 6-7-4, N.M.S.A., 1953 Compilation (P.S.) under which the state purchasing agent is controlled.

Therefore, in light of the above analysis, this office must conclude that the resolution adopted by the State Board of Finance, allowing participation by political subdivisions in S.P.A. contracts, is invalid since it is not authorized by law.

There is no doubt that the purpose for the resolution has justifiable merit in that it might afford a reduction in expenditure with respect to the cost of purchasing by the political subdivisions.