

Opinion No. 62-70

June 13, 1962

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

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

QUESTION

QUESTION

1. May municipalities, counties and school districts secure the written approval of the State Board of Finance for making purchases or entering into contracts for purchases without competitive bids as required by Sec. 6-5-4 of the Public Purchasing Act, as Amended?

CONCLUSION

1. Yes.

OPINION

ANALYSIS

This is a supplementary opinion published at the oral request of the State Board of Finance, and which pertains to Attorney General's Opinion No. 62-66, published on May 28, 1962. In Attorney General's Opinion No. 62-66 this office held that the various municipalities, counties and school districts of the State could not purchase under SPA contracts. A resolution adopted by the State Board of Finance authorizing these various political subdivisions to purchase under SPA contracts pursuant to the State Purchasing Agent's Act 6-7-1 to 6-7-13, 1953 Compilation, as Amended, was declared to be invalid. If this resolution had been given effect it would have completely circumvented the Public Purchasing Act 6 - 5 - 1 to 6 - 5 - 9, N.M.S.A., as Amended, under which the purchasing of counties, school districts and municipalities is strictly governed.

In this opinion we did not discuss Section 6-5-4 (E) of the Public Purchasing Act, as Amended, since we did not deem it necessary in analyzing the question presented. Inquiry has now been made however, as to whether such provision would bear upon the holding.

Section 6-5-4 (E), 1953 Compilation (PS) provides as follows:

"Any purchase or sale made in violation of this section shall be void, provided that the requirements with reference to obtaining bids shall not apply where the public interests

will be better served and where it is impracticable to obtain bids. In such cases the purchaser shall secure the written approval of the state board of finance for making such purchases or entering into such contracts without competitive bids."

In essence, this section provides that a municipality, county or school district may purchase, with the written approval of the State Board of Finance, without obtaining bids as prescribed by Section 6-5-4 (B) of the Public Purchasing Act.

This is not an exception to the ruling in Attorney General's Opinion No. 62-66. This particular statutory provision, 6-5-4 (E), supra, merely provides a way in which the political subdivision may enter into various contracts with suppliers without conforming to the bid requirements spelled out in Section 6-5-4 (B) providing the State Board of Finance finds that it is in the public interest and that bids are impracticable. This section does not provide that political subdivisions may purchase under SPA contracts. However, when the board has given the written approval to purchase, without bidding, the municipality, county or school district in question may purchase under any terms so approved. If the supplier in such instance happens to be one named in a specific SPA contract, and if the supplier agrees to sell to the political subdivision pursuant to the same terms of this SPA contract, such a sale would be valid.

It should be noted that the board in its discretion, under Section 6-5-4 (E), supra, may decide and give written approval to a municipality, county or school district to purchase without conforming to the bid requirements, if the board believes it is in the public interest and if bids are impracticable. This obviously cannot be a "blanket approval". If a valid decision is to be made, each request must be considered on its merits. In other words, the board must know why it is in the public interest and must have facts which show that bids are impracticable before a reasonable and valid decision may be reached.

In arriving at a decision the board must also consider the legislature's intent in enacting the State Purchasing and the Public Purchasing Acts. Certainly a primary purpose in enacting both laws was to furnish a method in which the State and political subdivisions could purchase economically. However, by specifically excepting municipalities, counties and school districts from the State Purchasing Act, the legislature required them to follow the local bid requirements of the Public Purchasing Act. It can therefore, be reasonably assumed that the legislature, in the interest of the overall state economy, contemplated that the political subdivisions should purchase from the local merchants.