

Opinion No. 64-141

November 13, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Harry Wugalter, Chief, Public School Finance Division Department of Finance & Administration, Santa Fe, New Mexico

QUESTION

QUESTIONS

- (1) Must a school district follow the bid law in connection with leasing equipment which is personal property?
- (2) Must a school district follow the bid law in the rental of buildings or office space?

CONCLUSION

- (1) See analysis.
- (2) No.

OPINION

ANALYSIS

The first question presented involves the issue of whether or not a school district which desires to lease equipment which is personal property for school purposes is required to follow the bidding requirements contained in the Public Purchasing Act (Section 6-5-4, N.M.S.A., 1953 Compilation).

Generally, under the Bateman Act (Section 11-6-6 through 11-6-12, N.M.S.A., 1953 Compilation.) it is declared unlawful and punishable as a misdemeanor for any school indebtedness to be incurred which is not completely payable in full during such current year.

Section 11-6-6, N.M.S.A., 1953 Compilation sets out:

". . . it shall be unlawful for any board of county commissioners, city council, town trustees, board of education, board of trustees, or board of school directors of any school district, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging

to that current year, and any and all kind of indebtedness for any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void. . . ."

By express statutory provision, however, **lease purchase** and **conditional sales contracts** are exempted from the Bateman Act. Sections 6-5-10 and 6-5-11, N.M.S.A., 1953 Compilation set out in full:

"6-5-10. **Lease purchase and conditional sales contracts.** -- Any conditional sales contract, or lease, which provides for either an optional or mandatory passage of title at any time, **shall be considered a purchase for the purposes of Sections 6-5-1, to 6-5-8, New Mexico Statutes Annotated**, 1953 Compilation (being Laws 1939, Chapter 233, Sections 1 to 7, as amended, and Laws 1943, Chapter 98, Section 2)." Emphasis supplied)

"6-5-11. **Lease purchase and conditional sales contracts -- Exemption from Bateman Act.** -- Conditional sales contracts or lease purchase agreements with the state, county, district, municipality, or any other subdivision of the state, are exempt from the provisions of sections 11-6-6 through 11-6-12, New Mexico Statutes Annotated, 1953 Compilation, commonly referred to as the Bateman Act."

The above statutes expressly provide that one type of lease -- lease purchase, is exempt from the requirement of the Bateman Act and that all indebtedness incurred by a school district be paid out of current funds. Leases which are not lease purchases or conditional sales contracts are not exempted and are therefore, clearly within the prohibition of the Bateman Act.

Section 6-5-10, supra, declares that **lease purchases are considered a purchase for the purposes of Sections 6-5-1 through 6-5-8, and which is inclusive of the Public Purchases Act.** Thus, in answer to your first question a **lease purchase** by a school district is exempted from the Bateman Act, supra, but is subject to the Public Purchases Act in respect to bidding requirements. If, however, such lease is not a **lease purchase** -- but is a lease without provision to purchase, then such is not exempted from the Bateman Act and is illegal under such statutory provision if not payable within the current year, and such leases would also be subject to the Public Purchasing Act. (Section 6-5-4, supra).

Secondly, you have inquired whether a school district is required to follow the Public Purchasing Act and bidding provisions in renting **realty and buildings** for school purposes.

We think clearly that the rental of realty and school buildings whereby the local school board rents from private entities for school purposes, does not come within the provisions of the Public Purchases Act.

The rental of buildings and realty necessarily involves a number of unique considerations, such as: size of buildings, location, proximity to the area to be served, maintenance, construction, heating, utilities, and transportation servicing. From a careful reading of the Public Purchasing Act and the above authorities, we are of the opinion that leasing of realty and buildings by school districts does not fall within the Public Purchases Act. Sections 6-5-10 and 6-5-11, supra, we believe refer and have application only to leases not involving realty. Any such leases, however, involving realty must be entered into in accordance with the Bateman Act and should not provide for the payment of public moneys for any period beyond the current fiscal year in which such lease becomes effective. Also, see our prior Attorney General's Opinion No. 64-74, dated June 2, 1964 relating to the leasing of public buildings, and Attorney General's Opinion No. 59-78, dated July 22, 1959.