

Opinion No. 64-54

April 28, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. T. T. Sanders, Jr., Attorney for New Mexico Military Institute, P. O. Box 550, Roswell, New Mexico

QUESTION

QUESTIONS

(1) May New Mexico Military Institute purchase printing supplies in excess of \$ 500.00 from a New Mexico firm without the necessity of public bids under Articles 10-1-8, etc.?

(2) Does the University of New Mexico Press, which is operated and maintained by the University of New Mexico, comply with the statutory requirements under Article 10-1-10, N.M.S.A., 1953 defining a "New Mexico firm"?

CONCLUSIONS

(1) No, except under emergency procedures.

(2) No.

OPINION

ANALYSIS

Your first question requires a determination as to whether our law relating to the purchase of printing or printing supplies (§ 10-1-8 to 10-1-12, N.M.S.A., 1953 Compilation) excludes such purchases from the provisions of other general laws regarding purchases. New Mexico Military Institute is a state educational institution. Art. XII, § 12, New Mexico Constitution. It is governed by a Board of Regents (Sec. 73-28-1, N.M.S.A., 1953 Compilation) and is authorized to accept grants of aid, including those from the United States (Sec. 73-30-15, N.M.S.A., 1953 Compilation).

Such being the case the institution is expressly excluded from the operation of the State Purchasing Agent Act (Section 6-7-1 to 6-7-13, N.M.S.A., 1953 Compilation). Section 6-7-11, supra, reads in part as follows:

"A. The provision of this act (6-7-1 to 6-7-13) shall not apply to:

(5) The boards of regents of the various educational institutions. . . ."

The Section above quoted in part B thereof does, however, specifically provide that the boards of regents of educational institutions **may**, if they so desire, avail themselves of the provisions of the act and of the services of the state purchasing agent.

Unless the Board of Regents does so desire to avail itself of the provisions of the above cited Act, it would find it necessary to comply with the provisions of § 6-5-4, N.M.S.A., 1953 Compilation except insofar as it may be rendered not applicable by virtue of the provisions of Sections 10-1-8 to 10-1-12, supra. This latter act provides in substance that, if printing or printing supplies are ordinarily obtainable from New Mexico firms, such printing or printing supplies **must be purchased from such New Mexico firms** unless written approval for other purchases is first obtained by the state board of finance. Such was the holding in Opinion of the Attorney General No. 6382 appearing at page 343, Report of Attorney General 1955-56 which is here affirmed. However, except for such qualifications, there would appear to be no reason why other applicable provisions relating to public purchases would not apply. Report of the Attorney General, 1939-1940 No. 3099, appearing at page 34.

To summarize, if the board of regents desires to use the provisions of the State Purchasing Agent Act, supra, such act would apply with the limitation that if the printing or printing supplies were ordinarily available from a New Mexico firm, the purchase must be made from such firm unless written permission to do otherwise is first obtained from the state board of finance.

If the board of regents does not so elect, then the provisions of the Public Purchases Act, supra, would then apply with the same restriction that if the printing or printing supplies are ordinarily available from a New Mexico firm they must be purchased from such firm unless prior written approval is obtained from the state board of finance.

Except, therefore, as modified by the provisions that if printing or printing supplies are ordinarily available from a New Mexico firm the purchase must be made from such firm, unless the state board of finance properly permits otherwise, all purchases of printing or printing supplies must be made in accordance with applicable provisions of other laws regarding public purchases.

Your next question requires a determination of whether or not the University of New Mexico Press would come within the definition of a New Mexico firm within the meaning of Section 10-1-10, N.M.S.A., 1953 Compilation. This section reads, in part, as follows:

"The term 'New Mexico firm' as used in this Act (10-1-8 to 10-1-12) shall be construed to mean any **person, or persons, firm, company or corporation authorized to do business under the laws of the state of New Mexico**; Provided, that the labor required to produce such printing **shall be performed in a plant located in this state** and which is under the **control** and management of such corporation, firm or association. . . ." (Emphasis added)

The University of New Mexico Press is operated and maintained primarily for the use of the University and is located in this state under the control and management of the board of regents of the University. The labor is performed in a plant located in this State. The University of New Mexico is a state educational institution. Article XII, Section 12, New Mexico Constitution. It is governed by a board of regents. Section 73-25-3, N.M.S.A., 1953 Compilation. Section 73-25-4 provides as follows:

"The regents of the university and their successors in office shall constitute a body corporate under the name and style of, the Regents of the University of New Mexico, with the right, as such, of suing and being sued, or contracting and being contracted with, of making and using a common seal and altering the same at pleasure."

Under our law it is apparent that the board of regents of our educational institutions is a body politic and is designated as a body corporate insofar as nomenclature is concerned. However this designation does not grant to the board of regents the same authority, powers, responsibility and liability of the ordinary business corporation. It would not have to meet the requirements of corporations organized under the general corporation laws of this state or of a corporation organized under the laws of a foreign state and doing business in this state under a proper authorization. The answer to the question would resolve itself into a determination of legislative intent as to the meaning of the word "person, or persons, firm, company or corporation" as used in Section 10-1-10, supra. In determining the construction to be given the language of the sections, the language must be considered as a whole.

The Board of Regents of the University of New Mexico is designated as a corporation. It is, however, a public corporation of this state as distinguished from a private or business corporation.

It is stated in **Municipal Corporations**, Yokley, Vol. 1, p. 18, Sec. 8, as follows:

"A quasi municipal corporation is not a true municipal corporation having powers of local government but is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective."

It is likewise stated in **McQuillan, Municipal Corporations**, 3rd Ed. Vol. 1, p. 293, Section 1.84, as follows:

"In the absence of specific constitutional inhibition, a state, by its legislature, may create municipal and public corporations of any description. These corporations are bodies politic created to administer designated affairs **in their respective areas**. They exercise delegated powers of government, and are usually regarded (in legal theory at least) as subordinate departments or auxiliaries or convenient instrumentalities of the state for the purpose of local or municipal rule." (Emphasis added)

It is stated in **Ross v. Trustees of University of Wyoming** 228 P. 636 (Wyo. by Brett, L.J.) as follows:

"The University, though declared by statute to be a body corporate by a specified name is not separate from or independent of the state. . . ."

Our courts have similarly held in numerous cases. See **Livingston v. Regents of New Mexico College of Agriculture and Mechanical Arts, et al.**, 64 N.M. 306, 328 P. 2d 78.

The statute above cited refers throughout to New Mexico firms. A New Mexico firm is defined in the act (10-1-10, supra) as any **person or persons, firms, company or corporation authorized to do business** under the laws of this state. Construing this language, the word "corporation" is linked with "person or persons, firm or company authorized to do business in the state of New Mexico." So considered, the word "corporation" refers to a business entity and not to a public corporation. This is particularly evident when the objects of the University -- being the promoting of knowledge -- are considered. Section 73-25-2, N.M.S.A., 1953 Compilation. The operation of a printing plant by the University is an operation designed to further the object of the University and for its own use **and not as the operation of a commercial activity**. The University of New Mexico Press is not a New Mexico firm within the contemplation of the statute. Sec. 10-1-8, et seq., supra.

New Mexico Military Institute must comply with the provisions of either the State Purchasing Act, supra, or the Public Purchases Act, supra. However, in this connection, it may only call for and consider bids from New Mexico firms if the printing or printing supplies are ordinarily obtainable from a New Mexico firm. If not, non-resident firms may be invited to bid and such bids considered. The University of New Mexico Press is not a New Mexico firm within the meaning of this requirement.