

## Opinion No. 65-03

January 21, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Frank Bachicha, Jr., Assistant Attorney General

**TO:** C. R. Sebastian, Director, Department of Finance and Administration, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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Does Section 6-5-4 (D), N.M.S.A., 1953 Compilation require the State Board of Finance to approve public purchases in excess of \$ 1,000 where an emergency situation is found to exist and where, at least three (3) written bids are obtained?

#### CONCLUSION

No.

### OPINION

#### {\*5} ANALYSIS

Section 6-5-4, N.M.S.A., 1953 Compilation (P.S.), as regards the present problem, appears to be clear and unambiguous and is thus not subject to construction. However, certain comments concerning the operation of such statute are appropriate.

It is our opinion that the State Board of Finance must be requested to approve a purchase, which is subject to the provisions of Section 6-5-4, supra, forming a part of the Public Purchases Act, only in two instances. The first of these is where the provision of paragraph "D" of that section is applied and bids as provided for therein cannot be secured. The second such situation is where the proviso of Subsection "E" explained infra, comes into play. Our present inquiry, however, is limited to the former.

The restrictive provisions of Section 6-5-4, supra, are contained in Subsections "A", "B", and "C" thereof. An exception to these restrictions is provided for in Subsection "D" thereof in the following language:

"D. In any case where a school board, board of county commissioners, governing body or any state institution or governing body of any municipality finds that it is **necessary for the preservation or safeguard of life and property** to make an expenditure exceeding one thousand dollars (\$ 1,000) before the time required for publication of notice for bids as herein provided, such boards, commissioners or governing bodies

may by **resolution unanimously passed**, declare that such an emergency exists and make the necessary purchase, if otherwise permitted by law, without publication of such notice, but in such event the purchaser shall obtain at least three (3) written bids as herein provided for purchases involving more than five hundred dollars (\$ 500) but less than one thousand dollars (\$ 1,000). **If three (3) such bids cannot be secured the purchaser may make the purchase or enter into the contract with the approval of the state board of finance.**" (Emphasis supplied)

The foregoing, by express language, is applicable only where the expenditure will exceed one thousand dollars (\$ 1,000), and where the local governing body finds that such expenditure is "necessary for the preservation or safeguard of life and property." Still, in order to avoid the requirements imposed in a normal situation, such local governing body **must** declare that such an emergency exists, by **unanimous** resolution. Once this is done the proposed purchase is treated as one which involves an expenditure of more than five hundred dollars (\$ 500) but less than one thousand dollars (\$ 1,000), i.e., "three (3) bona fide written bids" are to be obtained and, where goods are to be purchased such bids must come from regular dealers in the commodity being purchased. All of this may be affected without obtaining state board of finance approval.

Now, where the bids above mentioned cannot be secured, the purchase may still be made, without regard to the requirements applicable in a normal situation, **but only with the approval of the state board of finance.**

Subsection "E" broadens the exceptions to the restrictions referred to above. It permits any purchase to be made without obtaining {6} bids "where the public interests will be better served and where it is impracticable to obtain bids," so long as the purchaser secures the written approval of the state board of finance for making such purchase without obtaining competitive bids.

We refer you to other previous opinions rendered by this office treating closely related problems. These are: Attorney General Opinions Nos. 3366, 4591 (Unpublished), 58-174, 61-94, and 62-70 dated respectively December 28, 1939, September 27, 1944, August 26, 1958, October 2, 1961 and June 13, 1962.