

Opinion No. 65-08

January 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Edwin O. Wicks, M.D., Director, Department of Public Health

QUESTION

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Does the 5 percent preference in § 6-5-3, N.M.S.A., 1953 Compilation, apply to the purchase of goods by a municipality when part of the purchase price of said goods is to be paid by the Federal Government?

CONCLUSION

No.

OPINION

{*16} ANALYSIS

Section 6-5-3, supra, is part of the Public Purchases Act and is set out in its entirety as follows:

"PURCHASE FROM RESIDENT FIRMS REQUIRED -- EXCEPTIONS. -- All purchases of goods made by any purchaser to which this act is applicable shall be from manufacturers, distributors or retail establishments having or maintaining in the regular course of business merchandise inventories within the state upon which taxes are paid, provided, however, where no facilities are available for the purchase of any particular goods within the state or where the same may be purchased at a saving of more than 5%, such goods may be purchased outside of the state. **The provisions of this section shall not apply to any purchase in which the United States is interested involving the expenditure of federal funds.**" (Emphasis supplied)

It is expressly declared in the underscored portion of the law, set out above, that the 5 percent preference does not apply to any purchase which involves expenditure of Federal Funds.

For the purpose of this opinion, Section 6-7-14, N.M.S.A., 1953 Compilation (P.S.) which is the comparable "5 percent resident preference" in the State Purchasing Agent's Act need not be considered. It is inapplicable in this instance because municipalities are not governed by the terms of the State purchasing Agent's Act having been expressly

excepted therefrom under Section 6-7-1, N.M.S.A., 1953 Compilation. And the New Mexico Supreme Court in *State v. Valdez*, 59 N.M. 112, 119, 279 P.2d 868 (1955), has held that the Public Purchases Act is still in force as to all of the agencies {**17*} excepted in the State Purchasing Agent's Act.

Thus, Section 6-5-3 of the Public Purchases Act continues in full force and effect as to municipalities and when a city purchases goods, which involves the expenditure of Federal funds, the 5 percent resident preference does not apply.