

Opinion No. 65-154

August 16, 1965

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

TO: Mr. Dante Vaio, State Purchasing Agent, State Capitol Building, Santa Fe, New
Mexico

QUESTION

QUESTIONS

1. Is the rental of office furniture and equipment, on a monthly basis, subject to the State Purchasing Agent's Act.
2. Is the procedure of handling this equipment the same as that required in the leasing of equipment?
3. How long may a department rent such equipment on a monthly rental basis?
4. With reference to emergency purchases, if the total payment of rental for several months time exceeds the \$ 50.00 limit, is this amount to be considered as one sum payment or the accumulation of several months' payment?

CONCLUSIONS

1. Yes.
2. See analysis.
3. See analysis.
4. See analysis.

OPINION

{*261} ANALYSIS

A rental of office furniture and equipment is the same as a lease of same and this office has previously held in Attorney General's Opinion No. 59-78 (copy attached) that such a lease must be executed by the State Purchasing Agent and meet State Purchasing requirements.

We assume from the nature of your second question that you have distinguished lease from rental on the basis of the term and the manner in which the money for the use and possession of such equipment is paid by the lease. If this is the situation, then you do not necessarily have to follow the identical procedures for leasing equipment though you must necessarily follow the mandatory requirements of the State Purchasing Agent's Act. You may, in your discretion, adopt a different procedure for month-to-month rentals so long as the regulations establishing such procedure falls within the statutory authority granted to you by the Act.

The answer to your third question again rests with you in your {262} exercise of discretionary authority under Section 6-7-4 and Section 6-7-9 of the Act, N.M.S.A., 1953 Compilation. In establishing the time limit for the department in the renting of equipment on a monthly basis, you should consider the period in which such contract of rental would remain in favorable competition with all other favorable proposals for the rental of the same equipment. In view of these circumstances we might suggest that the establishment by rule of a rental period of one year on a month-to-month basis would not be considered an unreasonable exercise of your discretion under the law.

Your last question refers to Section 6-7-5, supra, which pertains to emergency purchases by departments. This law provides for emergency purchases by the department of the State under certain specified conditions without going through the office of the Purchasing Agent when the cost of such emergency requirements does not exceed \$ 50.00. Since this Section of the law is based on the actual amount paid by the department for the emergency item, we believe that the same basis should be used in determining emergency rentals of office items or equipment. . In other words, the total amount paid by the department as rent under the contract of rental should be computed and that sum used as the basis for deciding whether such contract comes within your jurisdiction. Stated in the terms you have used in your question, if the total payment of rental for several months time exceeds the \$ 50.00, then it is subject to your approval and further action as provided by Section 6-7-5, supra.