

Opinion No. 65-21

February 4, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Honorable Alex G. Martinez, State Representative, State Capitol Building, Santa Fe, New Mexico

QUESTION

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May the Legislature constitutionally pass a special bill to provide for payment from public funds of an account for supplies sold the State in violation of the State Purchasing Act; that is, over the legal amount without competitive bids and without the State Purchasing Agent having declared in advance that an emergency existed, where the supplier acted in good faith, the charges are reasonable, and the emergency did in fact exist, but because of the admitted non-compliance with the Purchasing Act, the State Board of Finance has refused payment?

CONCLUSION

Not in this manner, but see analysis.

OPINION

{*36} ANALYSIS

Section 6-7-10, N.M.S.A., 1953 Compilation provides that purchase orders or contracts entered into for the purchase of supplies contrary to the State Purchasing Act are void and of no effect.

Presumably your proposed legislation is to enable the State to pay a supplier who acted in good faith and furnished supplies to the State at a reasonable price but, through no fault of the supplier, the requirements of the State Purchasing Act were not complied with.

From the way your question is phrased, it appears that you have in mind a single supplier. To pass such an act as you suggest, would, in all probability, violate Article IV, Section 24 of our Constitution. This section prohibits the enactment of special laws "in every case where a general law can be made applicable." A special law has been defined by our Supreme Court as one made for individual cases, or for less than a class of persons or subjects. **State v. Atchicon, Topeka & Santa Fe Railroad Company**, 20 N.M. 562, 151 Pac. 305.

To alleviate the type of situation with which you are concerned, we suggest enactment of a general law. Such a law could take either of two forms. You could draft a bill appropriating a certain amount of money to the State Board of Finance to pay suppliers in instances where purchases have been made in violation of the State Purchasing Act, upon determination by the Board that the supplier acted in good faith and furnished the supplies at a reasonable price. In this connection we would point out that a few times each year it happens that purchases are inadvertently made in violation of the State Purchasing Act. A law as just suggested would protect good faith suppliers who happen to furnish supplies in there occasion al instances.

Another alternative would be to make this particular appropriation to the State Board of Finance as a line item in the General Appropriation Act, spelling out the conditions under which payment could be made out of this fund to the supplier.

You need to have such safeguards surrounding payments out of this fund as will prevent the existence {*37} of such a fund from leading to additional violations of the State Purchasing Act.