

## **Opinion No. 66-143**

December 21, 1966

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

**TO:** Robert L. Thompson, Engineer, State Electrical Administrative Board, 505  
Marquette, N.W. - Room 1020, Albuquerque, New Mexico

### **QUESTION**

#### **FACTS**

During this year the Capitol Buildings Improvement Commission entered into an agreement whereby the State was to receive lower utility rates from the New Mexico Public Service Company providing the State purchased various materials and equipment owned by the Public Service Company; such equipment being required in the transmission of electrical power to the State Capitol Complex. A portion of this sale involved the transformers located at the New Mexico Capitol Complex which had been installed by the Public Service Company through the years preceding this agreement. The Attorney General's Office advised the Commission that this sale was subject to the Purchasing Act and invitations for bids were sent out on August 17, 1966. The requirements of this invitation provided that the successful bidder remove the existing transformers, return them to the Public Service Company and install replacement transformers of identical size and capacity. An option was also provided which allowed the Commission to purchase the existing transformers in lieu of replacement transformers. Because of this option, the Public Service Company was placed in an advantageous position over other bidders because its bid obviously did not include cost of installation of transformers. The Company's low bid was accepted by the Capitol Buildings Improvement Commission. After the contract was awarded, the Public Service Company merely transferred the ownership of the existing transformers to the State in exchange for its bid price. No installation of transformers was undertaken by the Public Service Company because the transformers that were purchased were already set in place and performing adequately.

#### **QUESTION**

Do the facts stated above constitute a violation of the Electrical Administrative Law, Sections 67-19-1 through 67-19-19, N.M.S.A., 1953 Compilation, as amended?

#### **CONCLUSION**

No.

### **OPINION**

## {\*186} ANALYSIS

At the outset, it is noted that public service companies when performing electrical work, which is an integral part of their own system, and when such work does not go beyond the "meters", are specifically exempt from the jurisdiction of the Electrical Administrative Board under Section 67-19-1(a), supra. Thus no violation of your law occurred when the Public Service Company originally installed the transformers in question, because at that time the Company {\*187} owned the transformers and performed the work under the statutory exemption cited above.

Furthermore, we see no violation of the Electrical Administrative Law in the subsequent purchase and sale of these transformers. The sales contract that was awarded did not involve electrical contracting. Therefore, the Public Service Company was not required to hold an Electrical Contractor's license before accepting the contract. Nowhere under your law do we find a provision that requires a license to merely sell electrical equipment. If the transformers in this case had been sold and installed, it would be another matter. However, since no such work was undertaken no license was required. In this connection it should also be noted that the invitation to bid was not limited to bids from licensed electrical contractors. Anyone can bid on a public work. It is only the acceptance of bid that is conditioned upon legal and professional qualifications of the bidder.

In conclusion your attention is further invited to the fact that the contract in question was designed to satisfy the laws with respect to state purchasing which, as you know, provide for public bidding on state work. Needless to say, the attempt was successful because the State was permitted a substantial saving of public funds. And this was accomplished without denying anyone the right and opportunity to bid on this contract. Because of the unique circumstances, the New Mexico Public Service Company was in the best position to be the successful bidder, but this fact in no way invalidated the awarding of the contract, nor did it result in any violation of your law.