

## Opinion No. 69-42

May 12, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Robert J Laughlin, Assistant Attorney General

**TO:** W. K. Aldridge, Deputy State Fire Marshal, Fire Marshal's Office, P. O. Drawer 1269, Santa Fe, New Mexico 87501

### QUESTIONS

#### FACTS

A New Mexico supplier of motor fire apparatuses builds such apparatuses in his own plant located in the State of New Mexico. In building such apparatuses the supplier fabricates the body and some other appurtenances in his own plant, but purchases most of the component parts of the apparatus, such as the chassis, fire pump, fire hose, hose reels, nozzels, piping, valves, and fittings, plus additional equipment and appliances such as fire extinguishers, tools and ladders.

#### QUESTIONS

Is such a supplier of motor fire apparatuses entitled to a manufacturer's preference pursuant to Section 6-5-32A, N.M.S.A., 1953 Compilation?

#### CONCLUSION

Yes.

### OPINION

#### {\*64} ANALYSIS

Section 6-5-32 (A), N.M.S.A., 1953 Comp., provides as follows:

"In awarding contract for furnishing materials to a state agency or any local public body, bidders who offer materials, grown, processed, or manufactured wholly in the {\*65} state shall be awarded the contract in preference to any competing bidder who offers materials not grown, processed or manufactured wholly in the state, whenever the bid of the competing bidder is five percent [5%] or less lower."

The question here is whether a builder and supplier of motor fire apparatuses who fabricates the body and some other parts of said apparatus, but purchases some of the other component parts which go into the apparatus is entitled to a preference under the above quoted statute.

The decision turns on what is meant by the term "manufactured". This word is not defined by the statute. The New York case of **People v. Morgan**, 63 N.Y.S. 76, 48 App. Div 395, made the following explanation about the meaning of the term "manufacturer":

"Whoever creates a useful thing by useful labor is entitled usually to be called a "manufacturer". The fact that he purchases, rather than makes, some of the parts, does not destroy that character. A boilermaker is a manufacturer, although he purchases the boilerplates rolled into form, and purchases also the tubes and rivets. So will a cabinetmaker, who buys the wood he uses in polished form or carved, and buys the cloth, hair, and leather he uses. No manufacturer of a finished product in this age works up the raw materials. The practical manufacturer assembles the material he needs from all quarters in its most finished condition, and does the rest himself. A corporation making fountain pens is a manufacturing corporation, \* \* \* though it purchases from different sources the rubber holder and gold pens which it manufactures into fountain pens."

Under the above definition building motor fire apparatuses from component parts would certainly constitute manufacturing.

The statute in question uses the phrase "manufactured **wholly** in the state". It might be questioned whether the motor fire apparatuses are manufactured "wholly" within the state. It is our opinion that these apparatuses would be manufactured wholly within the state so long as the process of turning the component parts into a motor fire apparatus is not begun until such component parts are within the State of New Mexico.

It should be noted that the underlined policy of Section 6-5-32, supra, is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining plants and other facilities within the state and giving employment to residents of the state.

It is the opinion of this office that a builder and supplier of motor fire apparatuses who uses component parts in the building of the apparatuses, which component parts are manufactured outside of the State of New Mexico, would still be considered a manufacturer, and is entitled to a preference under Section 6-5-32, supra.