

Opinion No. 69-87

August 4, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

TO: Mr. Paul Becht, State Purchasing Agent, State Capitol, Santa Fe, New Mexico 87501

QUESTIONS

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May the Office of the State Purchasing Agent delegate to specific procurement officers of certain state agencies the authority to make purchases in excess of one hundred dollars but not in excess of two hundred fifty dollars?

CONCLUSION

No. but see analysis.

OPINION

{*137} ANALYSIS

The Public Purchase Act of 1967, Section 6-5-17 **et seq.** N.M.S.A., 1953 Compilation, established a comprehensive system of regulation over the means by which state and local agencies purchase goods and supplies. It was the purpose of this legislation to insure the efficient and economical operation of government throughout the state; the principal method by which this end was to be achieved was the submission of the great bulk of official purchases to the competitive-bidding process.

As a means of further insuring {*138} economy and efficiency in purchasing, the authority to order purchases was centralized. Section 6-5-21, N.M.S.A., 1953 Compilation, provides that:

"A. All purchasing for state agencies shall be performed by the state purchasing agent, except as otherwise provided in the Public Purchases Act [6-5-17 to 6-5-35].

B. All purchasing for local public bodies and those state agencies excluded from the requirement of purchasing through the state purchasing agent shall be performed by a central purchasing office designated by the governing authority of the user, except as otherwise provided in the Public Purchases Act."

It is clear that the statute has a major objective the close, centralized supervision of purchase orders. Only where such centralized control was thought to be harmful or unproductive of savings were exceptions allowed. Certain named state agencies were granted the authority to procure their own supplies, Section 6-5-22, N.M.S.A., 1953 Compilation; emergency purchases were permitted under defined circumstances Section 6-5-27, N.M.S.A., 1953 Compilation; and specified transactions were placed outside the regulation of the Act, Section 6-5-34, N.M.S.A., 1953 Compilation. With those exceptions, state purchases were placed explicitly under the terms of the Act.

Section 6-5-22 (B) (2) provides that the Act shall not apply to:

"(2) requirements of users such as repairs of disabled equipment or machinery where the occasion demands immediate service, perishable food products, and other services and materials where ordering through the central purchasing office would entail unnecessary and detrimental delay and loss to the user and the cost of which will not exceed one hundred dollars (\$ 100). Such purchases shall be made in the minimum amount necessary for the immediate needs of the user. On such purchases, regular requisitions shall be issued by the user. A copy of the requisition, together with a copy of the invoice covering the purchase, shall be immediately forwarded to the central purchasing office along with a statement, signed by the user making the purchase, showing the necessity for the purchase."

It would appear that the statutory language is clear and unambiguous: unless the purchase desired to be made can be justified as falling within any of the classes of exceptions described above, and if the amount of the purchase exceeds one hundred dollars, the purchase order must issue only upon compliance with the statutory requirements. The New Mexico Supreme Court, in **Maxwell Land Grant v. Jones**, 28 N.M. 427, 213 P. 1034 (1923), indicated that careful compliance with statutory procedures would be required of administrative agencies:

"The legislature enacted the law under which the action now complained of was taken, and in such act it undertook to prescribe the method and mode of procedure to which the Commission must resort. Having done so, such Commission is confined to the procedure thus prescribed, and a failure to conform thereto and any substantial departure therefrom vitates its action."

It is recognized that in certain situations these requirements may cause some delay in obtaining needed materials. Your attention is therefore respectfully directed to Section 6-5-34 (F), N.M.S.A., 1953 Compilation, which provides that the Act does not apply

"F. To purchase of materials at prices equal to or less than ^{*139} the prices stipulated in current federal supply contracts from the supplier or his authorized representative. Prices must be from nationally published federal price schedules or a 'Federal Government Price Schedule' published by a firm under contract with the federal government;"

There is every reason to hope that this provision, and the permission to purchase directly which is granted under Section 6-5-22 (B) (2), N.M.S.A., 1953 Compilation, will afford sufficient freedom of operation to allow your office to most effectively discharge its important duties.