

Opinion No. 79-23

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OPINION OF: Jeff Bingaman, Attorney General

BY: Jeff Bingaman, Attorney General

TO: John B. Bigelow, Chief Public Defender, Public Defender Department, 215 West San Francisco, Santa Fe, New Mexico 87501

CONFLICT OF INTEREST

Public notice and competitive bidding are required for contracts over \$1000 between members of the state legislature and the Public Defender Department to provide legal services to indigents accused of crime.

QUESTIONS

Are public notice and competitive bidding required for contracts over \$1,000 between members of the New Mexico legislature and the Public Defender Department to provide legal services to indigents accused of crime?

CONCLUSIONS

Yes.

ANALYSIS

Contracts between state agencies and members of the legislature are subject to the Conflict of Interest Act (Sections 10-16-1 to 10-16-15 NMSA 1978) and are governed by the provisions of Section 10-16-9, NMSA 1978 which provides:

"A state agency shall not enter into any contract of purchase with a legislator or with a business in which such legislator has controlling interest, involving services or property in excess of one thousand dollars (\$1,000) where the legislator has disclosed his controlling interest, unless the contract is made after public notice and competitive bidding. As used in this section contract shall not mean a 'lease'."

A professional legal services contract is, as contemplated by that section, a "contract of purchase" . . . "involving services or property. . . ." Therefore, if the contract is (1) for services or property in excess of \$1,000, and (2) awarded without public notice and competitive bidding, it is contrary to this section of the Conflict of Interest Act.

The necessity for competitive bidding in this case would, however, appear to be inconsistent with Section 13-1-24(B) NMSA 1978 of the Public Purchases Act which

generally exempts contracts for professional and technical services from the bidding requirements of that Act. Nevertheless, Section 10-16-9, **supra**, is the specific provision pertaining to contracts between state agencies and legislators and, in the event of a conflict, between two statutes, effect will be given to the specific rather than the general statute. **New Mexico Bureau of Revenue v. Western Electric Co.**, 89 N.M. 468, 553 P.2d 1275 (1976).

In sum, contracts for services or property in excess of \$1,000 between a state agency and legislator may only be awarded after public notice and competitive bidding.

We would also note that Article IV, Section 28 of the New Mexico {*56} Constitution would prohibit a contract between the Public Defender Department and a legislator if the legislator was in office in 1968 when the original Indigent Defense Act was passed (Sections 31-16-1 to 31-16-10 NMSA 1978), regardless of whether public notice and competitive bidding are used.

ATTORNEY GENERAL

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