

**Opinion No. 80-07**

February 28, 1980

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Anthony P. Marquez, Assistant Attorney General

**TO:** Mr. Finlay MacGillivray, New Mexico State Fair Manager, Post Office Box 8546, Albuquerque, New Mexico 87108

**PARKS, RECREATION AND FAIRS**

The Public Purchases Act, Sections 13-1-1 to 13-1-27 NMSA 1978 (Supp. 1979), does not apply to the granting of a concession contract by the New Mexico State Fair Commission.

**FACTS**

The New Mexico State Fair Commission currently contracts with a concessionaire to dispense food and liquor to the public during the New Mexico State Fair and interim events in the grandstand and Tingley Coliseum.

**QUESTIONS**

Does the Public Purchases Act, Sections 13-1-1 to 13-1-27 NMSA 1978 (Supp. 1979), apply to the granting of a concession contract by the New Mexico State Fair Commission?

**CONCLUSIONS**

No.

**ANALYSIS**

The Public Purchases Act, Sections 13-1-1 to 13-1-27 NMSA 1978 (Supp. 1979), provides that, except as otherwise provided by law, all purchases of materials and services shall be made in accordance with the bid requirements of the Act. Section 13-1-11 NMSA 1978 (Supp. 1979). Section 13-1-2 (J) NMSA 1978 (Supp. 1979) of the Public Purchases Act, however, also provides that:

"J. 'purchasing' means the procurement of materials and services for the use of state agencies and local public bodies;"

A concession contract is the sale of a privilege or license to do business on the State Fair Grounds in return for a percentage of the income or profits. It does not entail the

procurement of any service directly to the New Mexico State Fair. The concessionaire provides the services of dispensing food and liquor directly to the public. Thus, the New Mexico State Fair is not a user of the services provided by the concessionaire. Section 13-1-2(E) NMSA 1978 (Supp. 1979). Moreover, the licensing of a concessionaire does not involve the expenditure of any public funds and would, therefore, not come within the purview of the Public Purchases Act. 1960 Op. Att'y Gen. No. 60-12.

### **OPINION**

In addition, Sections 16-6-4 and 16-6-15 NMSA 1978 provide that the New Mexico State Fair Commission has broad authority to perform all acts and do all things necessary or convenient to carry out the powers granted to the New Mexico State Fair Commission. In accordance with this authority, the Commission may choose any reasonable method it deems appropriate and expedient to ensure the availability of food and beverage {\*117} services to the general public attending functions at the State Fair or on the State Fair Grounds.

Therefore, in view of the inapplicability of the Public Purchases Act and the broad powers of the New Mexico State Fair Commission under Sections 16-6-4 and 16-6-15 NMSA 1978, we must conclude that the New Mexico State Fair Commission need not advertise or invite bids from prospective concessionaires but may negotiate the award of a concession contract provided, however, the New Mexico State Fair Commission obtains fair market value in exchange for the concessionaire's right to do business on the State Fair Grounds. **See** N.M. Const., Act. IV, Sec. 14.

### **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General