

Opinion No. 22-3447

May 25, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Honorable John V. Conway, State Superintendent of Public Instruction, Santa Fe, New Mexico.

Contracts for Architect's Plans for School Buildings Need Not Be Based Upon Competitive Bids.

OPINION

{*156} In reply to your letter of the 24th instant, asking if, under the provisions of Section 4893, Code of 1915, it is necessary for competitive {*157} bids to be submitted for expenses incurred for architects services in drawing plans and compiling specifications in connection with the erection of public buildings, I wish to advise:

Section 4893 reads as follows:

"No expenditure involving an amount greater than \$ 200.00 shall be made except in accordance with the provisions of a written contract, and no contract involving an expenditure of more than \$ 500.00 for the purpose of erecting any public buildings or making any improvements shall be made except upon sealed proposals and to the lowest responsible bidder."

Your inquiry involves the question as to whether expenses incurred for architect's fees involves expenditures "for the purpose of erecting any public buildings," etc.

Upon first consideration, it would appear as if the language of the section would cover any and all expenditures connected with the erection of public buildings wherein the amount of such expenditure was in excess of \$ 500.00.

Upon more careful consideration, however, it would appear as if the words "for the purpose of erecting public buildings," do not include fee for architects services, as such expenses are not "for the purpose of erecting public buildings," but rather, in connection with the "erection of public buildings."

Had it been the intent of the legislature to include any and all expenses incidental to the erection of public buildings, within the prescription of the statute, it would appear that it would have used language of a more comprehensive nature.

Also, we are to keep in mind, that architects have a general, uniform fee, of a certain per cent of the amount of the contract price, which is charged as a fee for services for plan drawing and building supervision.

With such practice in mind, the submission of the drawing of plans and supervision that is incidental thereto to competitive bids, in cases where the expense is in excess of \$ 500.00, would be futile and useless, and the law does not require the performance of foolish acts in carrying out its requirements.

A strict construction of the section mentioned, to make it apply to services of architects, would also lead to ridiculous results, if carried to its ultimate effect, as such a holding would also require that expenses for services of attorneys in representing school districts or other public agencies for which no legal adviser is provided by law, in the erecting of public buildings or making any improvements, must be contracted for, after requiring such attorneys to submit their proposals to render such services upon competitive bids. It is quite within the province of the language of this section, if strictly construed, to require such a procedure in the case mentioned, when it is well known that attorneys are not permitted to bid for business of any kind or nature.

It is, therefore, my opinion, that expenditures for architects' services are not to be included in the prescription of the statute requiring competitive bidding for expenditures in excess of \$ 500.00.