

Opinion No. 31-205

July 13, 1931

BY: E. K. Neumann, Attorney General

TO: Honorable Geo. M. Neel, State Engineer, Santa Fe, New Mexico.

{*83} Your letter of July 13th makes the following queries relating to the Girls Welfare Board:

(a) If, under the laws of this state, it is necessary for them to advertise for bids and give the work to the lowest bidder in case of an expenditure which would amount to as much as three or four thousand dollars?

(b) Can they select two or three contractors and ask for bids from them, giving the work to the one submitting the lowest and best bid?

(c) Can they select a contractor in whom they have every confidence as to his integrity and ability and give the bid to him on a basis of labor and material plus a reasonable amount for contractor's service and profit?

This question is a rather perplexing one and has given us some little trouble, as there is a general idea that all expenditures of this kind must and can be made only upon contract entered into with the lowest responsible bidder after sealed bids have been received after advertisement therefor.

A careful reading of the laws of this state, even back to the time when state institutions were first created by statute, reveals the fact that advertisement for bids for expenditures of public money was not provided for in all cases. Generally, however, we find such a provision where certain appropriations were made for specific buildings. Then for some institutions and departments {*84} we find general requirements in such cases. A careful search fails to reveal any such provision for the Girls Welfare Board, with one exception as hereafter noted.

Article 15 of Chapter 130 of the 1929 Code, which provides for a tax-levy for the building fund for state educational institutions during the years 1927, 1928, 1929 and 1930, and for the building of buildings for the Girls Welfare Home to the amount of \$ 25,000.00, provides specifically that such money can be expended only under the supervision of the Board of Finance upon contracts let to the lowest responsible bidder, after advertisement for bids. Unless the expenditure now contemplated comes from such fund created as provided by the article quoted, it is our opinion that the question (a) must be answered in the negative. Consequently, the answer to questions (b) and (c) must be in the affirmative.

It is our suggestion, however, that, from a standpoint of public policy, advertisement for bids and a contract let to the lowest responsible bidder for such expenditures is the best method to pursue, and lessens criticisms which might be directed to the acts of the Board.