

Opinion No. 37-1733

August 9, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Claude Gamble County Clerk Clovis, New Mexico

{*149} Under date of August 6th you have written me in your capacity as Chairman of the Legislative Committee of the New Mexico Association of County Clerks and Treasurers and requested an interpretation relative to certain exhibits as to whether same are within the contemplation of Chapter 168 of the Session Laws of 1937.

Said Chapter is entitled:

"AN ACT RELATING TO THE LETTING OF CONTRACTS FOR PRINTING AND PRINTED SUPPLIES BY THE STATE OF NEW MEXICO AND POLITICAL SUBDIVISIONS THEREOF; MAKING EXCEPTIONS THERETO; PROVIDING PENALTIES FOR VIOLATIONS OF THE ACT; AND REPEALING ALL LAWS OR PARTS OF LAWS IN CONFLICT WITH THIS ACT."

It is apparent from the title above quoted, as well as from the context of the act, that the law only has application to the letting of contracts for printing and printed supplies. It is necessary in each instance, therefore, to determine whether or not the proposed purchase is one of printing or printed supplies. If such contract is without the scope of this designation then same is not included within the terms of the law.

Section 2 of the Act provides:

"That in the purchase of printing or printed supplies **not ordinarily obtainable** from New Mexico firms it shall be permissible to call for bids from both New Mexico firms and non-resident firms; provided, however, that in award of such contract New Mexico firms shall be given preference when the bid price shall not exceed the bid price of any non-resident competitor."

Section 3 of the Act defines the term "New Mexico firm" and it is construed to mean any person, or persons, firm, company, or corporation authorized to do business under the laws of the State of New Mexico; provided that the labor required to {*150} produce such printing shall be performed in a plant located in this state and which is under the control and management of such corporation, firm, or association.

Your first exhibits submitted are termed Exhibit A from a miscellaneous record and Exhibit B from marriage record. Your question is as follows: "As these records are not only **not ordinarily obtainable** in New Mexico, but it is impossible to obtain them from New Mexico firms, is it legal to purchase them from nonresident firms?"

Exhibit A is nothing more nor less than a blank sheet containing ruled lines across the top of same and down the sides and across the bottom. I am informed that these lines are not printed, but that they are machine ruled by some process in the manufacturing. It is my opinion that there being no printing whatever upon Exhibit A it is not within the terms of the Act and may be purchased from non-resident firms at the discretion of the purchaser.

As to Exhibit B, the record of marriages, I must consider that your statement is true when you state that it is impossible to obtain the same from a New Mexico firm. This being true, it would certainly fall within the scope of the words "not ordinarily obtainable" in New Mexico and it is my belief that same may therefore be purchased from non-resident firms.

You state in regard to Exhibit C that same is taken from one of your Cott Indexes and that it is a patented system manufactured in Columbus, Ohio, and that it is impossible to obtain the same from New Mexico firms. This being true, even though the sheet does contain printing, nevertheless it is my belief that same may be purchased from non-resident firms.

Exhibit D is a lithographed marriage license and contains no printing. Unless the exhibit is printed it is not within the contemplation of the Act and a lithographed exhibit may be purchased from non-resident firms. A lithograph is a print reproduced from a drawing on stone. It means to draw or to engrave on stone and then transfer to the paper.

Exhibit E is one of embossed letterheads. Embossed is not printing and is not under the terms of the Act.

In answer to your last question, it appears to me that where it is impossible to obtain bids from both New Mexico firms and non-resident firms that the law does not require any attempt to obtain such bids from New Mexico firms. The law does not require the doing of any vain or futile act.

Trusting the above will solve your problem, I am,