

Opinion No. 39-3178

June 19, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. T. G. Spannagel, Professor of Civil Engineering, New Mexico School of Mines, Socorro, New Mexico.

{*65} In your letter of June 15 you set out the following facts and make the following inquiry:

"It has been the policy of the New Mexico School of Mines in the past to carry a stock of draftsman's supplies for convenience of our student body. It is necessary that the School purchase from \$ 600 to \$ 1,000 worth of this equipment at the beginning of each school year. The company furnishing this equipment is an out-of-state company and has always allowed us a very considerable discount on their regular catalog quotation. The reason for doing this is purely to present their line of goods to the students.

I am interested to know, since the {*66} equipment is for resale to the students, whether or not you would consider this a purchase by a state institution and if we will be required to follow the new purchasing law with regard to bids and advertisements before this equipment may be purchased."

I take it that you have reference to Chapter 233, Laws of 1939, of which Section 2 defines "goods" as follows:

"The word 'goods' as used herein shall include all goods, wares, merchandise, supplies, furniture, equipment and every article or thing of whatsoever description purchased **for the use or benefit of any purchaser** to which this act is is applicable."

Clearly, your institution is a "purchaser" within the meaning of Section 1 of the Act. However, the Act applies only to the purchase of "goods" as defined in Section 2, namely, goods purchased "for the **use or benefit** of the purchaser."

If the equipment you mention is for resale to the students, and if none of the equipment is used by the school as such but rather is merely carried in stock for the convenience of your student body, then it cannot be said that the purchase thereof is for the use or benefit of the school as such, and such purchase would not, in my opinion, come under the Act.

By: FRED J. FEDERICI,

Asst. Atty. Gen.