

Opinion No. 39-3293

October 2, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. T. C. Gallagher, Superintendent, The Tatum Public Schools, Tatum, New Mexico.

{*111} In your letter of September 30 you inquire whether the Public Purchases Act (Chapter 233, New Mexico Session Laws of 1939) applies to the hiring of an architect in connection with the erection or the proposed erection of a new school building by your school board.

Although the act seems to be broad enough to include "labor," I do not believe the term "labor" may be extended to include the services of an architect because this type of service involves a careful selection of the person who is to perform the services.

A contract with an architect is a "personal contract," where the selection is often times, if not always, made on the basis of the reputation, ability, etc., of the architect, and to require a board to accept the services of the lowest bidder in such cases might well deprive the board of its right to select a man with the qualifications required by the board.

The services of an architect may be said to be analogous to the services of a portrait painter. A private individual will pick his portrait painter carefully and make his selection for personal reasons of his own.

The same would be true of a private individual seeking the services of an architect to plan and supervise the erection of his private home.

Certainly it cannot logically be said that the legislature intended to tie the hands of the board in its selection of an architect {*112} to plan and supervise the erection of a school building, and I so construe the Act.

FRED J. FEDERICI,

Asst. Atty. Gen.