

Opinion No. 39-3366

December 28, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. R. W. Boney, Comptroller, New Mexico State College of Agriculture & Mechanic Arts, State College, New Mexico.

{*129} In your letter of December 21st you submit several questions with relation to Chapter 233 of the Session Laws of 1939. I will attempt to answer each separately.

1. Does Chapter 233, Session Laws of 1939, repeal Chapter 168, Session Laws of 1937?

It is my contention that Chapter 233 of the 1939 Laws does not repeal Chapter 168 of the 1937 Session Laws.

2. Does Chapter 233 apply to services, such as professional, hospital, insurance, and materials and equipment not sold on a competitive basis? As an example, we recently purchased some fifteen microscopes costing over \$ 500.00. These microscopes are exactly the same price anywhere in the United States, but we went to the expense of advertising for bids in a local newspaper and did not receive a single bid.

I am of the opinion that the term labor may not be extended to include professional services, since this type of service involves a careful selection of the person. I am also of the opinion that this chapter does not apply to hospitals or insurance since these types of services also involve a careful selection.

Said chapter does not distinguish between goods which are bought on a competitive basis and goods which are not bought on such basis. Therefore, I feel that said chapter applies to all goods bought whether or not they be bought on a competitive basis.

3. Does Section 4 include all "goods" as defined in Section 2?

"Goods" as defined in Section 2 shall be applied to all of Chapter 233.

4. Does the exception under Section 3, regarding purchases involving Federal funds, apply to purchases, etc., mentioned in Section 4? Also are we to consider this exception as applying to our Morrill-Nelson Bankhead-Jones, Hatch, Adams, Purnell, Smith-Lever, Capper-Ketcham, and Further Development Funds? These are all funds received from the Federal Government to be used in cooperative Experiment Station and Extension work under The Federal Land Grant Act of 1863 and subsequent Acts making grants to the Land Grant Colleges.

The exception under Section 3 regarding purchases involving expenditure of federal funds applies only to Section 3 of said act. The exception applies to said development funds which you mention and which are received from the federal government to be used in cooperative Experiment Station and Extension work.

5. After sending out invitations for bids or advertising for same, as required, are we permitted to make purchases where no bids are received? Where only one bid is received? Where only two bids are received?

Where it is impracticable to obtain bids the purchaser shall secure the written approval of the State Board of Finance for making such purchases or entering into such contracts without competitive bids.

6. Section 7 provides a penalty for violation of the provisions of Section 6; what penalty is provided for violation of the other sections of this Act?

Any purchase or sale made in violation of Section 4 shall be void, provided that the requirements with reference to obtaining bids shall not apply where the public interests will be served and where it is impracticable to obtain bids. In such a case the State Board of Finance shall approve purchases or contracts.

Enclosed you will find copies of opinions which have been rendered by this office on this same subject matter.

Trusting that the foregoing sufficiently answers your questions, I am,