

Opinion No. 43-4344

July 27, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission, P. O. Box 1301, Albuquerque, New Mexico

Receipt is acknowledged of your letter dated July 23, 1943, in which you request an opinion from this office relative to the application of Chapter 124 of the Laws of 1943, known as the "State Purchasing Act" to the Employment Security Commission, and, in particular, you inquire whether the Employment Security Commission must comply with the provisions of said law.

Section 57-811 of the New Mexico 1941 Compilation, in Sub-section (a), authorizes the Commission to adopt such rules and regulations, and make such expenditures as it deems necessary and suitable in administering the act.

In Sub-section (k), the Commission is authorized and directed to cooperate with the Social Security Board, created by Congress on August 14, 1935, and is required to comply with the regulations prescribed by the Social Security Board governing the expenditure of such sums of money as may be allotted and paid to New Mexico for the purpose of administration of the Unemployment Compensation Law.

Under the Social Security Act, Title 42, U.S.C.A. 501 to 503, the Social Security Board is set up and authorized to allocate certain funds to the states which comply with the requirements of the act for the administration of the state law, and under Section 1202, the Social Security Board is authorized to make such rules and regulations as it deems necessary to the efficient administration of the act.

The Social Security Board has issued and published rules and regulations designated as Instructions, ES-501, relative to fiscal affairs in connection with grants to the states.

Rule No. 4261 provides as follows:

"When the law of the State applicable to such State agency on the same basis as to other departments and agencies of the State, so requires, purchases shall be made and contractual services procured through an established State purchasing agency, supplemented as necessary by additional controls adopted by the State agency to effectuate substantial compliance with the procurement standards of the Board, to the extent that such standards are not in conflict with mandatory requirements of State law;"

Rule No. 4280 requires all purchases and contracts to be made on a competitive basis by (1) advertising at least once a year, and posting notices that materials and supplies are to be purchased during the year, and inviting prospective vendors to file data from

which lists of prospective vendors shall be established; (2) submitting invitations to bid on materials and supplies required to the vendors listed in accordance with Paragraph 1; (3) in case of a purchase or contract amounting to \$ 1,000.00 or more, soliciting bids at least once in a newspaper of statewide circulation.

Rule No. 4290 provides that as to purchases amounting to less than \$ 100.00, competitive sealed bids shall not be required, although an effort should be made to obtain bids either oral or written from at least three vendors.

The State Purchasing Act, Chapter 124 of the Laws of 1943, in Section 4, requires that all purchases of \$ 1,000.00 or more shall be based upon sealed competitive bids, but that purchases or contracts involving the expenditure of less than \$ 1,000.00 may or may not be based upon sealed competitive bids, as such purchasing agent may deem for the best interest of the state. Thus, it is seen that on purchases or contracts of \$ 1,000.00 or more, the requirements of the Social Security Board and the state law are practically identical.

Section 15 of the State Purchasing Act repeals all laws or parts of laws in conflict with said act. If we consider the rules and regulations of the Employment Security Commission made under authority of law as having the force and effect of law, then the rule regarding purchases of \$ 1,000.00 or more is covered by the Purchasing Act, and for that reason such purchases would have to be made through the State Purchasing Agent, in conformity with the state law; but purchases of less than \$ 1,000.00 would not come under the state law for the reason that the Social Security requirements are greater than the requirements under the state law, and for that reason are not in conflict therewith, unless and until the State Purchasing Agent should promulgate rules and regulations covering purchases made by the Commission which would meet the requirements of the Social Security Board.

By C. C. McCULLOH

First Asst. Atty. Gen.