

Opinion No. 44-4499

April 14, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. L. Ormsbee, State Purchasing Agent, Santa Fe, New Mexico

In your letter dated April 13, 1944, you state that some State Institutions contemplate securing the services of an architect to draw up plans and specifications for use in the construction of buildings in the Post War period. You inquire whether a contract could be entered into by institutions for the services of an architect independent of the State Purchasing Act.

Section 6-703 of the N.M. 1941 Compilation, Pocket Supplement, being Section 3, Chapter 124, Laws of 1943, provides as follows:

"The State Purchasing Agent, except as in this act provided, shall purchase for each department all supplies, including such supplies as are common needs of each department, and shall make and execute for the State and each department thereof all contracts for buildings and the repair thereof, or for any improvement upon any property of the state or any department thereof, and every character of service, other than personal services, usually provided for by contract."

The services of an architect have been held to be personal services, and the general law relative thereto is set out in 6 C. J. S., Architects, Section 6 (b), Page 3000, as follows:

"It is generally held that statutes requiring competitive bidding or public advertisement before awarding public contracts do not contemplate that contracts for architectural services should be awarded on such a basis, such contracts being for personal services of a professional character, and calling for technical skill and experience of a high degree."

See also Louisiana v. McIlhenny, 9 So. 2d 467, 201 La. 78, 142 A.L.R. 533; People v. Board of Education of City of Utica, 190 N. Y. S. 798, 198 Appellate Division 476; State v. Brown (Tenn.), 21 S. W. 2d 721; Rossatti v. Common School District No. 96, 204 N. W. 833, 52 N. Dak. 931; Stephens County v. McCammon (Tex. Com. App.), 40 S. W. 2d 67.

In view of these authorities, it is my opinion that State Institutions may enter into contracts with architects to draw up plans and specifications of buildings, and that such contracts do not come within the provisions of the State Purchasing Act, and are exempt therefrom.

Hoping that the foregoing fully answers your inquiry, I am

By C. C. McCULLOH,

First Asst. Atty. General