

Opinion No. 51-5400

August 22, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable H. Vearle Payne Member, Board of Regents of New Mexico Western College Lordsburg, New Mexico

{*103} This is in reply to your letter of June 7, 1951, wherein, as a member of the Board of Regents of the New Mexico Western College, you inquire as to the propriety and legality of the purchase of insurance by the college from the insurance firm in which the husband of one of the members of the board of regents has an interest.

Your question directly raises the applicability of § 6, Chap. 233 of the Laws of 1939, which is § 6-406 N.M.S.A., 1941 Comp., to the situation described. The foregoing statute has been considered thoroughly and completely by this office in an opinion rendered April 21, 1943, to the District Attorney of the Fourth Judicial District at Las Vegas, New Mexico. It was held in that opinion that the limitation on doing business by and with officers, officials, board or commission members by state institutions or agencies did not extend to business done by any regularly established business in which an official or board member had an interest.

Dealing with a regular business is permitted by a specific exception to the law permitting such purchases to be made from "any established concern, firm or corporation doing a general business in which a member of a board, commission, governing body, official, agent or employee, to which this act is applicable is interested, when the goods purchased are sold and purchased as provided in this act in the regular course of business."

The opinion of April 21, 1943, by example illustrated what was meant by the exceptions. In that opinion it is stated that "The sale of a tractor by a jewelry store would not be a sale, in the usual course of business, but the sale of a washing machine by a drug store might readily be, when such sales are frequently made. The same would be true as to ordering merchandise. The ordering of a piano by a grocery store would not be in the usual course of business, but the ordering of a gun by a Montgomery Ward retail store or an automobile part by a garage, certainly would be."

"It is, therefore, my opinion that what is a purchase and sale made in the usual course of business depends upon the customary operation of the business involved; that no hard and fast rule can be laid down in all cases, but that each case must be tested and that, necessarily, a great deal of discretion is vested in the purchasing board."

It is my opinion that the purchase of insurance for New Mexico Western College from an agency in which a member's husband is interested comes within the exception, since,

as you pointed out in your inquiry, the agency is a regular insurance agency and has been in business for some time.

I trust this will answer your inquiry.