

## Opinion No. 52-5558

July 2, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. H. F. Scott State Purchasing Agent Santa Fe, New Mexico

{\*269} This is in reply to your letter of June 27, 1952, in which you request an opinion as to whether or not it is lawful for you as Purchasing Agent to exercise an option from one fiscal year to another. You particularly refer to a contract made with the Construction Materials Company which has an optional extension date to January 1, 1953.

I find nothing in the law that makes it unlawful for the Purchasing Agent to exercise an option, assuming the option is legal, if an {\*270} offer has been made and will be accepted and for a valuable consideration, since the option may become a contract after its acceptance. The only statute I find which might have some bearing on whether or not it is legal or illegal for the Purchasing Agent to exercise such an option is Sec. 6-405, N.M.S.A., 1941 Compilation, which reads as follows:

"Conformity with budgets - Invoices - Records. - All Contracts and purchases made by purchasers shall conform to the duly approved budget of the purchaser where a budget and the approval thereof is required by law, but nothing herein contained shall prevent the transfer of items within any school budget when such transfer is duly approved as provided by law.

"Before any warrant, check or voucher is issued or delivered in payment of any purchase, an itemized invoice or bill, and the bill of lading, if any, of the goods purchased and all of the goods shown on the invoice or bill shall be in the possession of the purchaser. All such invoices, bills, bills of lading and the written bids or proposals, and copy of the printed notice, where written proposals and advertisement is required, shall be filed as a part of the permanent records of the purchaser subject to audit as other records and shall not be changed, altered or destroyed for a period of at least five (5) years from the dates of the respective purchases."

Since the option, if accepted by you, conforms to the duly approved budget of any state department, I see nothing in the law which would make it unlawful for you to exercise an option beneficial to the State of New Mexico or to a department thereof.

It is, therefore, my opinion that if said option conforms to the duly approved budget of the purchaser, where a budget and approval thereof is required by law, that it is not unlawful for the purchasing agent to exercise an option from one fiscal year to another.

Trusting that this fully answers your inquiry, I remain