

Opinion No. 54-5941

April 12, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*392} This will acknowledge receipt of your letter of March 31, 1954, in which you ask whether or not under Section 6-502 of the 1941 Compilation, a corporation, firm or individual must have maintained a permanent business in good faith in an established office, and have been a taxpayer in this State, **both** for a period of two years before being eligible to be awarded a contract for the construction of state buildings.

We agree that the two year period applies both to the payment of taxes and to the maintenance of a permanent business in an established office in this State.

We do not agree, however, with your interpretation that a person must comply with the requirements of this section as a prerequisite to eligibility to contract public buildings in this State in all cases. Section 6-501 of the 1941 Compilation, provides that all contracts for the construction of public buildings are to go to people conforming with the requirements of Section 6-502, whenever practicable." We do not feel that it is practicable to award a contract to a New Mexico contractor as defined in Section 6-502 when another contractor has presented a lower bid. This, of course, assumes that you as State Purchasing Agent are satisfied as to the financial responsibility and fitness of the lower bidder and that the low bidder holds a New Mexico contractors license.

We feel that the correct interpretation of Section 6-501 makes it applicable only to situations where identical bids are received from contractors covered under Section 6-502, and otherwise eligible contractors who do not meet the requirements of this section.

By: Walter R. Kegel

Assist. Attorney General