

Opinion No. 55-6137

March 30, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Marshall S. Hester, Superintendent, New Mexico School for the Deaf, 1060 Cerrillos Road, Santa Fe, New Mexico

In your letter dated March 28, you refer to a memorandum from the State Purchasing Agent relative to House Bill No. 427, being Chapter 132, Laws of 1955, and inquire whether the Board of Regents of the New Mexico School for the Deaf is subject to the provisions of this Act or whether it is exempt from these provisions by reason of the fact that the control and management of the institution is vested in the Board of Regents and by reason of the Constitution and Chapter 133, Laws of 1951 (§ 6-7-11 of the 1953 Compilation).

Article 14 of the Constitution pertains to state institutions other than educational institutions. Article 12, § 13 of the Constitution, which was amended in 1949, provides, in part, as follows:

"The legislature shall provide for the control and management of each of said institutions by a board of regents for each institution, . . ."

This language was not changed from that contained in the original section and, therefore, laws pertaining to the control and management of educational institutions would continue in effect.

In 1939, § 6-5-1 of the 1953 Compilation, defining the word "purchaser", was passed as § 1, Chapter 233, Laws of 1939, being a part of the State Purchasing Act. This section, by its definition, included within the provisions of the Act the governing boards of all state institutions together with their agents and employees.

In 1943, the State Purchasing Agent Act was passed and in § 6-7-1 of the 1953 Compilation the word "department" is defined as including state institutions. Thereafter educational institutions came within the provisions of the State Purchasing Agent Act.

In 1951, by § 1, Chapter 133, § 6-7-11 of the State Purchasing Agent Act was amended and the following language was added:

"The boards of regents of the various educational institutions are hereby authorized, in their discretion to avail themselves of such of the facilities of the office of the purchasing agent, as may reflect any savings or advantage in the purchase of materials, supplies and other goods and services required to be purchased for such institutions and the purchasing agent of the state of New Mexico hereby is directed and required to make

available, to the boards of regents of the various educational institutions of this state, any and all of the facilities of his office, of which they may desire to avail themselves."

Although the definition of "department" was not expressly amended as contained in § 6-7-1, the amendment to § 6-7-11, by implication, excluded educational institutions from the definition of "department" in the State Purchasing Agent Act and gave such institutions the privilege of using the facilities of the State Purchasing Agent, but otherwise excluded them from such Act. By such exclusion, educational institutions fall within the exceptions contained in § 6-7-1 to the definition of the word "department" and would, therefore, be governed by the provisions of the 1939 Purchasing Act since they are still included in the definition of the word "purchaser" contained in § 6-5-1.

Since House Bill No. 427, being Chapter 132, Laws of 1955, only applies to purchases made by departments, as defined in § 6-7-1, with the implied amendment excepting such institutions, it is our opinion that this Act does not govern purchases made by the New Mexico School for the Deaf except when the services of the State Purchasing Agent may be desired and that such purchases may be made by the institution pursuant to the 1939 Purchasing Act.

By C. C. McCulloh

Assistant Attorney General