

## Opinion No. 56-6359

January 18, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable John F. Simms, Governor, State of New Mexico, Santa Fe, New Mexico

We have your letter of December 22nd in which you requested an opinion from this office as to the following question:

In matters of purchase of "supplies, materials, machinery, equipment, furniture, printing and all articles and things," are the various "state departments, offices, boards, commissions, bureaus, state institutions and other state agencies," to follow the provisions of Section 6-7-1 to 6-7-13, N.M.S.A., 1953 (State Purchasing Agent's Act)? It appears that there is a conflict between Section 6-7-1 to 6-7-13, N.M.S.A., 1953 (State Purchasing Agent's Act) and Section 6-5-1 to 6-5-9, N.M.S.A., 1953, (Public Purchases) inasmuch as § 6-5-1 reads as follows:

"As used in this act (6-5-1 to 6-5-7), the word 'purchaser' shall mean and include all county, municipal, union high school, independent school district boards of education, boards of county commissioners; all county and state officials; heads of departments of state and agents and employees thereof; and any and all persons acting as purchasing agents for the state of New Mexico, or any political or municipal subdivision thereof; the governing boards of all state institutions together with their agents and employees; and every person or body charged with the duty of expending or authorizing the expenditure of public moneys in this state."

and Section 6-7-1, N.M.S.A., 1953, reads as follows:

"The word 'department' as used in this act (6-7-1 to 6-7-13) shall mean any state department, office, board, commission, bureau, state institution, or other state agency, excepting the judicial branch of government, and excepting counties, school districts and municipalities, now existing or which may hereafter be created by law, which expends any money derived in whole or in part from taxation or from grants or donations from the government of the United States.

"The word 'supplies' as used in this act shall mean supplies, material, machinery, equipment, furniture, printing, and all articles and things used by any department, in the exercise of any governmental activity or function."

From the reading of these two sections it would appear that each of the acts covered the state departments. The conflict arises in the application of the two acts, inasmuch as the public purchase act (6-5-1 to 6-5-9) requires three bona fide bids on expenditures of more than \$ 200.00 but less than \$ 500.00, and public notice on expenditures of more than \$ 500.00. The Purchasing Agent's Act (6-7-1 to 6-7-13) requires bids on

expenditures of more than \$ 1,000.00. Obviously these two acts cannot be applied to the State departments and agencies. We are of the opinion that insofar as the State departments, as defined by § 6-7-1, are concerned, the Purchasing Agent's Act (6-7-1 to 6-7-13) is controlling and governs the expenditures of funds for the items therein covered.

We arrive at this conclusion as follows: The Purchasing Agent's Act was the last expression of the Legislature, having been approved April 16, 1943 as Chapter 124, Laws of 1943. The Public Purchases Act was originally passed as Chapter 233, Laws of 1939. However, Section 6-5-1 was re-enacted as part of Chapter 98, Laws of 1943, approved April 15, 1943. Wherever there is, as in this case, an irreconcilable conflict in two enactments of the Legislature, the last in point of time will be deemed to have repealed the first enactment insofar as the conflict is concerned. See 82 C.J.S. "Statutes" Section 291, at page 489 and Section 297 at page 507.

This particular question as to the conflict between Chapter 98 and Chapter 124 of the Laws of 1943, was before the New Mexico Supreme Court in the case of State vs. Valdez 59 N.M. 112. In this case the Supreme Court stated that it was committed to the rule:

"That where two statutes have the same object and relate to the same subject, if the later act is repugnant to the former, the former is repealed by implication to the extent of the repugnancy, even in the absence of the repealing clause in the later act . . ."

"Here we have the additional factor that Ch. 124, supra, was approved one day later than Ch. 98, supra . . ."

The Court held that Chapter 124, Laws of 1943, superseded Chapter 233 of the Laws of 1939, as amended by Chapter 98 of the Laws of 1943, so far as state agencies are concerned.

For the reasons herein expressed, we are of the opinion that Section 6-7-1 to 6-7-13, N.M.S.A., 1953, controls State expenditures by State departments and agencies as defined by Section 6-7-1, and insofar as this Purchasing Agent's Act is inconsistent with Sections 6-5-1 to 6-5-9, this act (Public Purchases Act) was repealed by the enactment of the Purchasing Agent's Act.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General