

## Opinion No. 56-6431

April 26, 1956

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

**TO:** Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

You have asked our opinion on the following question:

"If the State Board of Finance approves in writing the purchase by the County of Chaves, through its Commissioners, of the equipment and improvements to the present County Hospital owned by Eastern New Mexico Medical Center, the nonprofit lessee corporation, which equipment and improvements are presently located in and on said County Hospital and grounds, can the Commissioners expend public funds obtained through the recent bond election to purchase said equipment and improvements, without compliance with the requirements as to publication and bids set forth in 6-5-4, New Mexico Statutes 1953, Annotated?"

We believe this matter is covered by the portion of § 6-5-4, N.M.S.A., 1953 Compilation, which provides as follows:

"Any purchase or sale made in violation of this section shall be void, provided that the requirements with reference to obtaining bids shall not apply where the public interests will be better served and where it is impracticable to obtain bids. In such cases the purchaser shall secure the written approval of the state board of finance for making such purchases or entering into such contracts without competitive bids."

The question of the serving of public interest and the impracticability of obtaining bids is a factual question to be determined by the Board of County Commissioners and the State Board of Finance. The determination of these boards is final unless such determination is arbitrary or capricious.

You further ask whether § 15-46-1, N.M.S.A., 1953 Compilation, is applicable to this situation. This section provides as follows:

"When any public work is to be done by order of the board of county commissioners of any county of this state it is to be paid out of county funds, and if said expenditure is authorized by law and exceeds the amount of three hundred dollars (\$ 300), said board of county commissioners is hereby required to advertise the said work for at least twenty (20) days in some newspaper published in the county wherein the work is to be done, before the letting of the said work, and if no newspaper is published in the county, to post notices in at least ten (10) conspicuous places for bids for such work, and let the same to the lowest responsible bidder, which bidder shall be required to enter into good

and sufficient bonds for double the amount of the contract price, for the faithful performance of said contract."

It is noted that this section was passed in 1887 and that § 6-5-4 was passed in 1939. Section 6-5-4 and companion sections, which comprise Chapter 233, Laws of 1939, constitute a comprehensive purchasing code for all public purchases exclusive of those controlled by the State Purchasing Act. They certainly cover all purchases which could be made by a county.

It is our opinion that Chapter 233, Laws of 1939, completely supersedes § 15-46-1 and that said section could not be applicable to the question which you present.