

Opinion No. 57-152

July 3, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Edward M. Hartman, State Comptroller, Santa Fe, New Mexico

QUESTIONS

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A company made a mistake in the extension of their quotation for directional pads, made to the City of Artesia, in which the price quoted was \$ 164.90, but through the error of the company such quotation should have been twice the quoted sum, to-wit: \$ 329.80.

May the City of Artesia legally pay the difference?

CONCLUSION

No.

OPINION

ANALYSIS

§ 6-5-4, N.M.S.A., 1953 Comp., provides, among other things, that purchases or contracts for materials when the sum is between \$ 200.00 and \$ 500.00 shall only be made or entered into after obtaining at least three bona fide bids. It is our understanding that the three bids were not obtained for a purchase which should have been governed by the \$ 200.00-\$ 500.00 category set forth in § 6-5-4, supra. This section further provides that purchases or sales in violation thereof shall be void.

We understand that the City of Artesia has already paid the \$ 164.90 originally quoted by the supplier but that the question now is whether the additional \$ 164.90 can be paid.

We do not find the answer to your question contained in the Public Purchases Law. In 43 Am. Jur., Public Works or Contracts, § 30, the rule is stated to be that contracts in violation of a Public Purchase Act are not only voidable but are void in toto, and that the contractor cannot hold the purchaser liable either for the contract price or the reasonable value of the goods or services furnished. The same section also holds that contracts obtained without the bidding requirements cannot be ratified by the public body or its officers. Furthermore, at § 91 of the foregoing work, it is said that recovery on quantum meruit is generally denied when the contract proves to be invalid because

of failure in the letting thereof to comply with mandatory provisions requiring competitive bidding.

We assume that there was no conscious wrong-doing, or intent to evade the Public Purchases Act, by either party. Nevertheless, we feel that the above rules, which are but examples of the public policy calling for strict compliance with the Public Purchases Act, are particularly applicable to the instant situation where the mistake, however innocent it may have been, was made by the supplier and which caused the purchaser to proceed as though the purchases were for less than \$ 200.00, in which case competitive bidding is not required.

To permit payment of the additional \$ 164.90, as is earnestly requested by the supplier, would be to sanction a sale in the \$ 200.00-\$ 500.00 bracket without the competitive bidding clearly required by § 6-5-4. This we cannot do. Further payment is prohibited.