

Opinion No. 58-164

August 4, 1958

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

TO: Honorable Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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An employee of a municipal school district proposes to sell real estate owned by him to the district. Is the district prohibited from purchasing the real estate from its employee?

CONCLUSION

No, so long as the seller has nothing to do with the purchase by the school district.

OPINION

ANALYSIS

We are cognizant of the provisions of § 73-8-15, N.M.S.A., 1953 Compilation, reading:

"No board of regents of state educational institutions, boards of education, board of school directors, nor any member of any said boards, nor any school official nor teacher either directly or indirectly, shall sell, to any school or state educational institution that they are connected with by reason of being a member of a (1) Board of regents of a state educational institution, (2) board of education, (3) board of school directors, or any school official or teacher, any school books, school furniture, equipment, apparatus, or any other kind of school supplies, property insurance or life insurance to any employee of such school or state educational institution, or do any work under contract, nor shall any such board or members thereof, or school officers or teachers, receive any commission or profit on account thereof, and all such persons are prohibited from being parties directly or indirectly to any such contract or transaction. Any person violating the provisions of this section shall be fined not exceeding one thousand (\$ 1,000.00) dollars, or imprisoned not exceeding one (1) year in the penitentiary, or be fined and imprisoned as aforesaid in the discretion of the court,"

but it can hardly be said to contemplate real estate.

The Public Purchases Act, being §§ 6-5-1, et seq., N.M.S.A., 1953 Compilation, presents an initial problem however. It might be said that § 6-5-6 would inhibit or restrict the proposed transaction. However, that section must be read in the light of the entire

act, which looks toward the purchase of **goods**, together with contracts for construction, materials, labor, etc. Nowhere is the acquisition of real estate mentioned expressly.

The term "goods" is defined in § 6-5-2 as follows:

"The word "goods" as used herein shall include all goods, wares, merchandise, materials, supplies, furniture, equipment and every article or thing of whatsoever description purchased for the use or benefit of any purchaser to which this act is applicable."

While we held in Opinion of the Attorney General No. 57-36 that insurance was included within the definition, to so hold here as to realty would be at least going a step further. While we believe the definition includes personal property, both tangible and intangible, we believe that no definition of "goods" can fairly be said to include land, unless of course the latter is expressly mentioned. It is not. Hence, the Public Purchases Act does not control.

We know of no other statutes which relate to your problem of school districts doing business with employees.

Municipal school boards, it should be added, have the same powers as county school boards as a general rule. § 73-10-2. Under that section and §§ 73-9-1 and 73-9-7, we have no doubt of the power of a municipal school district to acquire real estate. See Opinion of the Attorney General No. 4734, rendered June 7, 1945.

However, if the seller in question were to have anything to do with the purchase by the school district, we believe the transaction would violate certain common law rules against self-dealing by a fiduciary.