

Opinion No. 58-174

August 26, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

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

QUESTION

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Must the governing body of the city adopt a unanimous resolution before it makes a public purchase when it would be impracticable to obtain competitive bids or when the public interest is best served by not obtaining competitive bids?

CONCLUSION

No.

OPINION

ANALYSIS

The above opinion request is raised by the State Board of Finance on behalf of the City of Albuquerque. We are informed that the Purchasing Agent of the said city is charged with the responsibility of determining when it is impractical to obtain bids on public purchases by competition and when the public interest is best served by not obtaining competitive bids. The question thus raised is whether the City Commission must adopt or confirm his judgment by unanimous resolution in order to conform with § 6-5-4, N.M.S.A., 1953 Compilation of the State Purchasing Act. We are of the opinion that confirmation by resolution is unnecessary.

Paragraph 4 of § 6-5-4, supra, states:

"In any case where a school board, board of county commissioners, governing body of any state institution or governing body of any municipality finds that it is necessary for the preservation or safeguard of life and property to make an expenditure exceeding \$ 500 before the time required for publication of notice for bids as herein provided, such boards, commissioners or governing bodies may by resolution unanimously passed, declare that such an emergency exists and make the necessary purchase, if otherwise permitted by law, without publication of such notice, but in such event the purchaser shall obtain at least three (3) written bids as herein provided for purchases involving more then \$ 200 but less than \$ 500. If three (3) such bids cannot be secured the

purchaser may make the purchase or enter into the contract with the approval of the state board of finance."

We conclude from the foregoing that a resolution by the City Commission declaring that an emergency exists is required where the circumstances necessitate immediate purchases. The last paragraph of § 6-5-4 states:

"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 foregoing paragraph applies when the public interest is better served by not obtaining competitive bids or when it is impractical to obtain competitive bids. The said paragraph requires the approval of the State Board of Finance but is silent as to the requirement of approval by the City Commission. Hence, we are of the opinion that unanimous approval by the the city commission is not legally required in the aforementioned circumstances.

By way of conclusion, however, it is submitted that the Commission of the City of Albuquerque might well consider approval of purchases by its Purchasing Agent in the instances which are the subject of this opinion as a matter of policy rather than a legal requirement. Certainly, the City Commission is familiar with the needs of the particular municipality. Possibly the Commission could better determine when and where the public interest is best served by not receiving competitive bids prior to purchase than even the State Board of Finance under normal circumstances. Such approval could be of assistance to the State Board of Finance.

The foregoing recommendation is, of course, mere gratuitous advice. As noted in our conclusion, a unanimous resolution by the governing body of the city is not required prior to a public purchase when it is impractical to obtain competitive bids or when the public interest is better served by not obtaining said bids. Only approval by the State Board of Finance is required.