

Opinion No. 59-41

April 22, 1959

BY: FRANK B. ZINN, Attorney General

TO: Fred A. Thompson, Director State Game and Fish Department Santa Fe, New Mexico

New Mexico Game and Fish Department must purchase bird and fish food on a bid basis through the State Purchasing Agent's office except in cases of emergency.

OPINION

{*62} You recently inquired as to {*63} whether the New Mexico Department of Game and Fish is obligated to purchase bird and fish food on a bid basis through the Purchasing Agent's office.

It is my opinion that the purchase of such commodities must be made through the State Purchasing Office on a bid basis unless an emergency exists necessitating immediate purchase.

The provisions of Section 6-7-3, N.M.S.A., 1953 Compilation, provide in part that the State Purchasing Agent shall purchase for each department all supplies. Supplies, under Section 6-7-1, N.M.S.A., 1953 Compilation, are defined as all articles or things used by a department in the exercise of any governmental activity or function.

It is my view that the word "article" means a commodity such as an article of merchandise when the word is applied in the connotative language of Section 6-7-1, supra. Inasmuch as Section 6-7-4 requires the purchase of all supplies to be based on competitive sealed bids through the State Purchasing Agent's office, I believe that bird and fish food must be purchased in the manner as provided in the section. An exception to a purchase in this manner is found in Section 6-7-5, N.M.S.A., 1953 Compilation (P.S.), which generally provides that emergency requirements of perishable food products not to exceed \$ 50.00 may be purchased by a department without bids to supply necessary immediate needs unless the emergency requires the expenditure in excess of \$ 50.00 but not to exceed \$ 250.00 if approval of the Purchasing Agent is first obtained.

You pointed out in your inquiry that the compounding of the food products purchased was in the nature of a special process apparently limited to very few suppliers. The State purchasing laws are flexible enough to permit purchases without bids when the State Board of Finance declares an emergency. A proviso is also contained in Section 6-7-4 to permit direct purchases of supplies of a cost less than \$ 1,000.00 when the Purchasing Agent deems it proper. The Purchasing Agent may also reject competitive

bids when the article or goods sought to be purchased meeting the same specifications can be obtained at a better price in the open market.

The direct purchase provisions and emergency purchase provisions of the law were intended to provide some flexibility and discretion in the Purchasing Agent to permit the best interests of the state to be served, and would normally be used only in exceptional cases.

Fred M. Calkins, Jr.