

Opinion No. 59-78

July 22, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Dante Vaio State Purchasing Agent State Capitol Building Santa Fe, New Mexico

1. Leases for office space and for land do not have to be executed by the State Purchasing Agent.
2. Leases for office equipment such as IBM machines do have to be executed by the State Purchasing Agent in conformity with State Purchasing requirements.

OPINION

{*123} This is written in reply to your request for an opinion on the following questions:

1. Do leases for office space and for land have to be executed by the State Purchasing Agent?
2. Do leases for office equipment such as IBM machines have to be executed by the State Purchasing Agent and meet State Purchasing requirements?

It is my opinion that leases for office space and for land do not have to be executed by the State Purchasing Agent.

It is my opinion that leases for office equipment such as IBM machines do have to be executed by the State Purchasing Agent in conformity with State Purchasing requirements.

In resolving the questions you have asked, the over-all purpose of the State Purchasing Act (6-7-1, et seq.) should be looked to. The primary purpose of the Act is to provide a system of regulation and procedure of competitive bidding whereby the State can receive its needed supplies and services at the least possible cost. This is accomplished {*124} by the methods outlined in the Act whereby all departments and agencies of the State with certain exceptions purchase their supplies and services through the office of the State Purchasing Agent. Provisions are, of course, made for emergency and non-bid purchases where a bid purchase would be unworkable or not in the interests of efficient governmental operation.

With these things in mind, we turn to the first question presented regarding the authority of your office to sign "office rental agreements" and "land leases".

It is true that language can be found in the Purchasing Act which would indicate that such signing of these agreements would be the duty of the State Purchasing Agent. However, when the ultimate purpose of the purchasing requirements is kept in mind, it would seem that such is not the case. Leases for rental of office space or for the lease of land by their very nature do not lend themselves to a competitive bidding procedure. It would be difficult, if not impossible, to obtain adequate rental space or to obtain an adequate tract of land through this process. Such necessities are by their location and nature unique and it is clear that no suitable substitute could be obtained through a bidding procedure.

One other consideration leads me to the conclusion that such agreements are outside the purview of your office. Had the legislature intended that the State Purchasing Agent make and execute or sign all such leases and agreements, it surely would have provided some guide posts and standards to follow. As it stands now, there are no provisions in the Act by which you could justify approval or disapproval of such leases. It would, therefore, seem that a distinction is to be drawn between leases of realty and personalty.

There seems little question about your office having control of leases of personal property however. This seems clear since this type of item lends itself to the bidding process and should fall within the purview of your office. A good example would be if the State decided to lease all of its automobiles rather than purchase them as they now do. Clearly, such a lease would have to be obtained through the bid process and would come under your authority. Rental of IBM machines would seem to be analogous to automobiles since they are a type of equipment which would lend itself to bid purchase; therefore, leases of IBM machines, et cetera, would seem to be subject to your regulation.