

Opinion No. 59-99

August 12, 1959

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

TO: Mr. John Joe Wilkinson Assistant City Attorney Alamogordo, New Mexico

{*157} This is written in reply to your recent request for an opinion on the question of:

Whether the City of Alamogordo can purchase bulk gasoline from distributors on a rotation basis rather than the normal bid basis?

In answer to your question, it is my opinion that:

No, the City may not purchase bulk gasoline in such a manner as it would be in contravention of Section 6-5-4, N.M.S.A., 1953 Comp., (P.S.).

As you are aware, municipalities are subject to the "Public Purchases Act" (Sec. 6-5-1, et seq., N.M.S.A., 1953 Comp.) which was amended by Chapter 117, Laws of 1959, during the last session of the Legislature.

Section 6-5-4, N.M.S.A., 1953 Comp., (PS) controls the answer to your question. That section provides that all purchases in an amount more than \$ 500.00 but less than \$ 1,000.00 shall be made only after obtaining three bids. The act further provides that purchases over \$ 1,000.00 shall only be made after proper notice and publication and receipt of bids. In the case of purchases over \$ 1,000.00 where it is necessary to safeguard life or property, the procedure for notice and publication may be dispensed with at the election of the municipality but the necessity for bids may not. The only manner that purchases may be made under this section without the bid process is where the consent of the State Board of Finance is obtained.

It should be noted at this point that gasoline falls within the meaning of "goods" in Section 6-5-2, N.M.S.A., 1953 Comp.

It is clear then that the City of Alamogordo cannot purchase bulk gasoline on a rotation basis without conforming to the bid procedures as set out in Section 6-5-4, N.M.S.A., 1953 Comp., (PS).