

## **Opinion No. 61-111**

October 30, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

**TO:** Mr. Bill Hendrix, State Purchasing Agent, State Capitol, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. Is it the responsibility of the Employment Security Commission to purchase through the office of the State Purchasing Agent?
2. Under state law may the Employment Security Commission purchase on their own, items costing less than \$ 500.00, if a report of all expenditures is submitted weekly to the State Purchasing Agent?

#### CONCLUSIONS

1. Yes.
2. No.

### **OPINION**

#### ANALYSIS

Attorney General's Opinion No. 59-134, issued by this office, September 2, 1959, dealt with the issue posed by your first question set out above and concluded that the State Employment Security Commission is subject to the State Purchasing Act and therefore purchases made by the Commission are under the jurisdiction and control of the State Purchasing Agent. We are enclosing a copy of that opinion for your files.

In respect to your second question, the provisions of Sec. 6-7-4, N.M.S.A., 1953 Compilation, as amended, are controlling. This section provides in applicable part as follows:

"A. The purchase of all supplies and the letting of all contracts shall be based upon sealed competitive bids when the estimated expenditure exceeds the sum of one thousand dollars (\$ 1,000). Purchases or contracts involving the expenditure of less than one thousand dollars (\$ 1,000) may be based upon sealed competitive bids if the purchasing agent deems that it is for the best interest of the state. . .

\* \* \*

C. The purchasing agent is authorized and empowered to make reasonable rules and regulations governing the preparation and submission of bids to facilitate the work of his office, and may prescribe by rules and standards of quality and construction as seem to him best for the public service . . . provided, that in the event of an emergency requiring speedy action in the purchase of any supplies, or the letting of any contract, the purchasing agent may act without submitting bids as required in this section; provided, that to authorize any purchase or contract required to be submitted to competitive bidding without that competition, the state board of finance must have declared an emergency to exist and must authorize the purchase or contract to be made by the purchasing agent without competitive bids, and that authority shall appear of record upon the minutes of the state board of finance.

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**E. No department shall make any purchase except through the purchasing agent as provided in sections 6-7-1 through 6-7-13, New Mexico Statutes Annotated, 1953 Compilation, and the purchasing agent shall by rules and regulations prescribe the manner in which and the time when each department shall make payment for supplies furnished or for fulfilled obligations of contracts made by the purchasing agent on account of the business of the department." (Emphasis supplied)**

Under the provisions of the above statute it is contemplated that no "department" defined in Sec. 6-7-1, N.M.S.A., 1953 Comp., as inclusive of state commissions, shall make any purchase except through the State Purchasing Agent as provided in Sec. 6-7-1 through 6-7-13, N.M.S.A., 1953 Comp. We construe this language to require approval of the State Purchasing Agent before purchases or agreements for contracts are actually made by such commissions, and as being applicable to expenditures both in excess and below the sum of one thousand dollars.

The above quoted section, also requires the purchase of supplies and the letting of contracts in excess of the sum of one thousand dollars shall be based upon sealed competitive bids, and that purchases of supplies or the letting of contracts involving expenditures of less than one thousand dollars may be based upon sealed competitive bids "if the purchasing agent deems that it is for the best interest of the state." Such statutory provision contemplates that all purchases or contracts involving expenditures of less than one thousand dollars shall be processed by the State Purchasing Agent, handled through his office, and subject to his determination as to whether or not it is in the best interest of the State to require sealed competitive bids upon such proposed expenditures.

A procedure allowing the expenditure of public funds for supplies or contracts up to an amount of \$ 500.00 by the Employment Security Commission, without prior approval of the State Purchasing Agent, or a determination of the State Purchasing Agent as to whether or not it would be to the best interests of the State to require sealed bids on the

particular supplies or contract in question and in each particular instance, would in our opinion, be violative of the intent and provisions of the State Purchasing Act and the express requirement that purchases shall be handled through such office.

Section 6-7-5, N.M.S.A., 1953 Comp., as amended, provides.

"Emergency requirements of departments such as medicines, repairs for disabled equipment or machinery where the occasion demands immediate service, emergency or perishable food products, supplies and materials, where ordering through the state purchasing agent would entail unnecessary and detrimental delay and loss to the department and the cost of which will not exceed fifty dollars (50.00), shall be purchased by the department requiring same in the minimum amount necessary for their immediate needs. On such purchases, regular requisitions shall be issued by the department so purchasing. A copy of such requisition, together with a copy of the invoice covering such purchase, shall be forthwith forwarded to the state purchasing agent; Provided, that emergency requirements in excess of fifty dollars (\$ 50.00) and not to exceed two hundred fifty dollars (\$ 250.00) may be made if the approval of the state purchasing agent is first obtained, or if at least three [3] bids be first obtained, and the department desiring to make such purchase shall have the burden of showing the existence of such emergency."

As provided in Section 6-7-5, N.M.S.A., 1953 Comp., set out above, certain emergency requirements of departments where the occasion demands immediate service, supplies and materials, and where ordering through the State Purchasing Agent would entail unnecessary and detrimental delay and loss to the department, may be purchased in a minimum amount not to exceed fifty dollars. Emergency purchases above the amount of fifty dollars and not exceeding two hundred and fifty dollars are permitted by a state department if the approval of the State Purchasing Agent is first obtained.

Since the State Purchasing Act expressly provides for the making of emergency expenditures in the manner prescribed above, and contemplates that all other purchases of a State department be handled through the office of the State Purchasing Agent, it is therefore our opinion that the State Employment Security Commission is required by law to submit purchases or contracts to be made by such Commission for processing by the State Purchasing Agent, except in making emergency purchases as specified above.