

Opinion No. 62-94

July 20, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General George R Schmitt, Assistant Attorney General

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

QUESTION

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Is the Resident Preference afforded by Section 6-7-17, N.M.S.A., 1953 Compilation (P.S.) applicable in considering the bids tendered in response to the invitation for bids for the construction of Ute Dam near Logan, New Mexico?

CONCLUSION

No.

OPINION

ANALYSIS

Section 6-7-14, N.M.S.A., 1953 Compilation (P.S.) of the State Purchasing Agent's Act provides in part as follows:

"Whenever bids are received on goods manufactured or processed wholly within this state in competition with bids on goods manufactured elsewhere, the goods manufactured or processed wholly in this state shall be preferred, whenever the price therefor does not exceed, by a difference of five per cent (5%) the bid for such goods manufactured or processed outside of the state." (Emphasis supplied)

In this analysis, Section 1-2-3, N.M.S.A., 1953 Compilation, must also be considered. That law provides that "words and phrases shall be construed according to context and approved usage of language."

The question to be decided is whether the "construction" of a dam is included in the term "goods" in Section 6-7-14, supra.

The building of a dam involves the acts of labor and skill and the furnishing of material in the construction thereof. The items noted above which are a part of the actual construction are not "goods" because "goods" are generally defined as "wares" and "merchandise." Webster's New Collegiate Dictionary. The obvious fact that a merchant

is in the business of selling goods, while a contractor sells services and **uses and consumes** "goods" on a construction contract lends further support to this conclusion.

We invite comparison with Attorney General Opinion No. 5916, 1953-54, which concluded that construction of the state penitentiary was not "goods" under the Public Purchasing Act.

Under the foregoing analysis it is the opinion of this office that bids received on the construction of a dam are not "bids received on goods manufactured or processed within this state," and are not entitled to a resident preference as provided by Section 6-7-14, supra.