

## **Opinion No. 64-60**

May 7, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Donald J Wilson, Assistant Attorney General

**TO:** Mr. James B. Stapp, City Attorney, City Hall, P. O. Drawer 1838, Roswell, New Mexico

### **QUESTION**

#### QUESTION

Are expenditures and disbursements made by a city for maintenance and operation of a municipal water utility out of funds derived from the proprietary function and municipal operation of such public water utility within the purview of the Public Purchases Act, Section 6-5-1, et seq., N.M.S.A., 1953 Compilation?

#### CONCLUSION

Yes.

### **OPINION**

#### ANALYSIS

In order to properly answer this question it is necessary to read and analyze Section 6-5-1, et seq., N.M.S.A., 1953 Compilation (P.S.), hereinafter referred to as the Public Purchases Act, with and in the light of Section 14-39-1, et seq., N.M.S.A., 1953 Compilation (P.S.), which relates to the granting of franchises to public utilities.

The Public Purchases Act, as amended, deals generally with the public purchase of goods and in addition to classifying purchases, specifies when competitive bids are required. A "purchaser" as defined by § 6-5-1 includes all state, county and municipal officials. Thus a city is clearly within this definition. Section 6-5-4, supra, (P.S.) provides that "purchases, or contracts for materials or labor, or both materials and labor to be furnished or performed, made at any one time, which involve the expenditure of more than five hundred dollars (\$ 500) but less than one thousand dollars (\$ 1,000.00) shall only be made or entered into after obtaining at least three (3) bona fide written bids." If such purchase or contract involves the expenditure of more than one thousand dollars (\$ 1,000) notice must be given that sealed bids will be received at a certain time and place. There is nothing in the Public Purchases Act which expressly applies to expenditures by a city for the maintenance and operation of a public water utility.

Section 14-39-1, et seq. (P.S.) deals with the franchise, establishment, maintenance and operation of public utilities. We are unable to find any provision requiring bids when certain types of purchases or expenditures are made in the maintenance or operation of a public utility.

It now becomes apparent that the question is whether the Public Purchases Act or § 14-39-1, et seq. shall control. It is a fundamental rule that where a special and a general act deal with the same subject and are inconsistent, the special will prevail over the general -- in other words, the special is treated as an exception to the general. McQuillin, Municipal Corporations, § 21.37. Thus, inasmuch as Section 14-39-1, et seq. is an express statute with reference to Public Utilities, it would be reasonable to conclude that such act is controlling over the general provisions of the Public Purchases Act when a public utility is involved, as is the case here.

We must, however, look to the purpose, intent and rationale behind the Public Purchases Act. The object and purpose of provisions as contained in our Public Purchases Act is essentially to prevent favoritism, fraud, extravagance and improvidence in the awarding of municipal contracts. It is for the protection of the public. The provisions should be so administered and construed as fairly and reasonably to accomplish such object. They must, however, be given a reasonable and practical interpretation, to the end that municipal public work may be performed not only honestly but efficiently. (Sec. 63 C.J.S. Municipal Corporation § 995). As you have pointed out in your letter, public funds are moneys belonging to the United States or a corporate agency of the Federal Government, a state or subdivision thereof, or a municipal corporation. They represent moneys raised by the operation of law for the support of the government or for the discharge of its obligations. 42 Am. Jr. Public Funds, § 2. Also, general obligations and/or indebtedness of a city, town or village are payable from general funds of such city, town or village and therefore fall clearly within the general provisions of the Public Purchases Act. It was pointed out in **New Mexico Bus Sales v. Michael**, 68 N.M. 223, that in spending public funds extreme care and caution should be exercised so that the spirit as well as the letter of the pertinent statute is followed.

Therefore, it seems incumbent upon us to conclude that notwithstanding Section 14-39-1, et seq., the intent, purpose and spirit of the Public Purchases Act is to invite competition and protect the public. This can be done only by following the provisions of such Act. Thus, if the expenditures encountered in maintaining and operating a public water utility are of such an extent as to come within the provisions of the Public Purchases Act, such provision must be followed.