

Opinion No. 69-17

February 27, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Larry N. Smith, Assistant Attorney General

TO: Harry Wugalter, Chief, Public School Finance Division Department of Finance and Administration, Legislative Executive Building, Santa Fe, New Mexico

QUESTIONS

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If a public school district has a contract with a publishing company for yearbooks which was entered into prior to the 1967 Purchasing Act and which does not expire for another year, does the school have to cancel the contract and put the yearbook out for bid?

CONCLUSION

Yes.

OPINION

{*24} ANALYSIS

Although the question asked makes reference to the Purchasing Act, Section 6-5-17, et seq., N.M.S.A., 1953 Compilation (1967 Supplement), we believe it is the Bateman Act, Section 11-6-6, N.M.S.A., 1953 Compilation (1968) Interim Supplement) which is determinative.

Prior to 1968 amendments the Bateman Act provided:

"Bateman Act -- Indebtedness of county, municipality, and school district limited to collections for same year -- Excess void -- Penalty for violation. -- After March 12, 1897, it shall be unlawful for any board of county commissioners, {*25} city council, town trustees, board of education, board of trustees, or board of school directors of any school district, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any and all kind of indebtedness for any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void, and any officer of any county, city, town, school district or board of education, who shall, at any time, use the fund belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor and upon a conviction thereof

shall be fined not less than one hundred nor more than one thousand dollars or be confined in the county jail for a period of not more than six months or by both such fine and imprisonment, in the discretion of the court trying the case."

Inasmuch as the money for school yearbooks is not collected except for the current year, it is a violation of the Bateman Act to continue with contracts which extend beyond the current year.

We wish to point out that in 1968, the legislature amended the Bateman Act to provide certain exceptions as follows:

"Insurance contracts not exceeding five years, lease purchase agreements and lease agreements entered into by a local public body set out in section 11-6-6 New Mexico Statutes Annotated, 1953 Compilation, are exempt from the provisions of section 11-6-6 New Mexico Statutes Annotated 1953 Compilation, and such contracts, lease purchase agreements and lease agreements are declared not to constitute the creation of debt."

The purchase of yearbooks does not fall within any of the exceptions provided in 11-6-6.1, supra.