

## Opinion No. 34-719

January 31, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Mrs. Georgia L. Lusk, State School Superintendent, Santa Fe, New Mexico.

{\*109} This has reference to your letter of January 31, 1934 in which you ask for an opinion of this office as to whether or not Chapter 19 of the Laws of 1933 conflict with the provisions of Article II, Section 4 (1) of the rules and regulations prescribed by the President of the United States, pursuant to Section 209 of Title II of the National Industrial Recovery Act.

Article II, Section 4 (1) of said rules and regulations provides as follows:

"There shall be no requirement in any construction contract providing price differentiations for or restricting the use of materials to those produced within the Nation or State, provided, however, that preference shall be given to the use of materials produced under codes of fair competition approved under title I of the National Industrial Recovery Act, if prices, quality, and quantities available are satisfactory to the Administrator or to the agency of the United States executing the contract."

Chapter 19, Laws of 1933, provides:

"That in any and all public works within the State of New Mexico, whether constructed or maintained by the state, or by a department, a board, a commission, or by any subdivision or maintenance to which the State of New Mexico, or any {\*110} thereof; Provided, however, in subdivision thereof, has granted aid, preference shall be given to materials produced or manufactured in the State of New Mexico by citizens or residents thereof, or in any construction any case where, in the judgment of the different officers, boards, commissions, or other authority in this state, now or hereafter vested with the power of contracting for material used in the construction or maintenance of public works hereinabove referred to, it appears that an attempt is being made by producers or manufacturers in the state to form a trust or combination of any kind for the purpose of fixing or regulating the price of materials to be used in any public works, to the detriment or loss to the state, then the provisions of this Act shall not apply."

The title to Chapter 19, Laws of 1933, reads as follows:

"An Act to Give Preference to Materials Produced Within the State of New Mexico, Where Such Materials are Practicable in the Construction and Maintenance of Public Works."

It will be noted that the body of the Act is somewhat broader than the title since the title only requires preference to be given "where such materials are practicable, etc." Under

the provisions of Section 16, Article II, Constitution of New Mexico, it is my opinion that under any circumstances only so much of the act could be effective as is embraced in the title, and its operation therefore would in all events be confined to public works in the construction of which it would be practicable to give such preference. If the word "practicable" be given a broad construction, it could be said that in cases where the aid of the Federal Government is sought to be obtained under the NIRA it would not be practicable to give preference to materials produced within the State of New Mexico. At any rate, the question of whether or not the materials are "practicable" would in my opinion be left to the discretion of the board or commission having control of the public work under construction.

This act does not attempt to "restrict" the use of materials in public works to those produced within this state. It merely suggests that preference shall be given to such materials. Just what kind of preference or to what extent, it does not say.

The language of the statute is vague and indefinite. For that reason alone it is difficult to give it effect. However, if we construe it either literally or liberally, with the purpose of giving to it the effect intended by the legislature, we do not believe it in any way conflicts with Article II, Section 4 (1) supra.

By: QUINCY D. ADAMS,

Asst. Attorney General