

Opinion No. 39-3176

June 17, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mrs. Grace J. Corrigan, Superintendent of Public Instruction, Santa Fe, New Mexico.

{*64} In your letter of June 12 you inquire in effect whether Chapter 233, Laws of 1939, dealing with purchases of goods made by various governmental agencies, affects purchases of goods which are not in excess of \$ 200.00, particularly insofar as the 5% preference given to New Mexico merchants is concerned.

The Act is clear that in purchases exceeding {*65} \$ 500.00 the purchaser is required: (1) to advertise for bids in local newspapers for at least once each week for two consecutive weeks. (2) to accept the lowest responsible bidder meeting specifications, or reject all bids. (3) give a 5% preference to the New Mexico merchant submitting the bid as against out-of-state merchants likewise submitting bids.

In purchases involving the expenditure of more than \$ 200.00 but less than \$ 500.00, the purchaser is required: (1) to obtain at least three bona fide written bids but no advertisement for bids need be published. (2) Accept the lowest responsible bidder meeting specifications, or reject all bids. (3) Give a 5% preference to New Mexico merchants submitting bids as against out-of-state merchants submitting bids.

In purchases of \$ 200.00 or less, the purchaser is clearly not required to advertise for bids and, as a matter of fact, is not required to obtain bids of any kind.

The question remaining under this last situation, however, is whether in this type of purchase (\$ 200.00 or less), the purchaser must nevertheless purchase his goods from a New Mexico merchant unless he can show at least a 5% saving by purchasing from an out-of-state merchant. In other words, does the Act in any way attempt to bind or guide the policy of purchasers when the purchase at any one time involves an expenditure of \$ 200.00 or less?

I believe the Act must of necessity be construed as in no way affecting purchases of \$ 200.00 or less, but rather that the Act operates and is effective only with purchases of \$ 200.00 or more. In other words, the Act calls for bids only on purchases of \$ 200.00 or more, and when the purchaser has before him these various bids, from New Mexico merchants as well as out-of-state merchants, the law states that the purchaser must buy from the New Mexico merchant unless the out-of-state merchant under bids the New Mexico merchant by at least 5%.

To require, in purchases of \$ 200.00 or less, that preference be given to the extent of at least 5% to New Mexico merchants, would in effect wipe out the \$ 200.00 starting point

requiring bids because in order for a purchaser of a \$ 10.00 item to know whether he may safely purchase the same from an out-of-state merchant, he would of necessity have to call for bids also from merchants within the state in order to ascertain if he was making the out-of-state \$ 10.00 purchase at a saving of 5% over the purchase if made within the state. This in effect would require the purchaser to call for bids on a \$ 10.00 purchase which is clearly not the intention expressed in the Act.

In order to give a definite meaning to that portion of the Act which says that purchases involving an expenditure of more than \$ 200.00 shall be by competitive bid, it becomes necessary to hold that the Act as a whole was intended to apply only to purchases which at any one time involve the expenditure of more than \$ 200.00, and that in purchases of \$ 200.00 or less the matter is left to the sound discretion of the purchasing boards or agencies as to whether such boards or agencies shall give preference to New Mexico merchants in their purchases, and also as to whether such boards or agencies care to call for bids in such cases.

By: FRED J. FEDERICI,

Asst. Atty. Gen.