

Opinion No. 41-3781

May 5, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. G. S. Carter, Director School Tax Division Santa Fe, New Mexico

{*66} In your request of May 2, joined by Mr. Gallegos, Commissioner of Revenue, you ask for an opinion as to the effect of House Bill No. 147, being Chapter 74 of the Session Laws of 1941, with respect to patented articles, and in particular with respect to the necessity of obtaining bids for the purchase of automobiles.

After a careful consideration of the language of this statute, amending Chapter 233 of the Session Laws of 1939, I have come to the conclusion that all articles manufactured under patent and having a list of delivery price in excess of \$ 200.00 are exempt from the provisions of said Chapter 233, Session Laws of 1939, and that, of course, includes all automobiles.

The very purpose of patenting such machines, or the process and designs used in their manufacture, is to produce an article which cannot be duplicated and sold in the open market by others. It is such patented processes or designs which make bidding impractical in such cases, as demonstrated by the experience of the last two years. One cannot properly compare competitive bids on those articles when the very thing, process or design, or combination of things, processes or designs, which make one article more valuable than another, are not available to all the competitors who are bidding. This is true of all manufactured goods to such an extent at least that without further guidance from the Legislature, one cannot attempt to draw any line of demarcation as between patented goods. It must be assumed, therefore, that the Legislature intended to include all manufactured articles or products, the duplication of which by others is still restricted by patented rights, so long as they have a list or delivery price in excess of \$ 200.00. Articles having a list or delivery price of less than \$ 200.00 if purchased in large quantities exceeding in value the sum of \$ 00.200, are subject to bid. As to patented goods see Municipal Corporations, 44 C.J. 102, Section 2188, Note 86 (a) (2).