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Opinion No. 63-62-L  
R-214  
May 2, 1963

REQUESTED BY: MR. FRANK A. EYMAN, Superintendent  
Arizona State Prison

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTIONS:

1. May the Arizona State Prison accept an offer by a federal governmental agency to purchase metal signs manufactured at the prison manufacturing plant?
2. May the Arizona State Prison sell the products of its manufacturing plant on the open market?

ANSWERS:

1. Yes.
2. No.

1. A.R.S. § 31-311 provides for the establishment of a manufacturing plant at the State Prison and specifically limits the products it can manufacture.

A.R.S. § 31-261 prohibits the sale of products manufactured, produced or prepared in whole or in part at the prison from being sold or exchanged on the "open market" within the State of Arizona.

The Supreme Court of Colorado in Harvey v. State and County of Denver, 18 P.2d 321, 92 Colo. 114, defined "open market" when it stated in reference to this term:

"It conveys the idea of buying, at the dealer's price, what he offers as distinguished from the idea of presenting to him a schedule of what you desire in which he may or may not directly deal, and which he may be obliged to import, or manufacture to special design and asking him at what price he can meet your requirements."

It seems entirely consistent with the above statutes and definition of "open market" to conclude the manufacturing

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plant located at the State Prison may sell its products to a federal governmental agency when approached by the agency with an offer to purchase a product it is capable of manufacturing. Such a sale would not constitute selling the products of the prison on the "open market" and thus conflict with A.R.S. § 31-261 nor would it be in violation of the United States Code Annotated, Title 18, § 1761, inasmuch as the sale of prison-made products to a federal agency is specifically excepted.

2. As indicated above, A.R.S. § 31-261 specifically prohibits the sale or exchange of products, manufactured with prison labor, on the "open market." By the above definition of "open market" it follows that the prison could not offer its manufactured products for sale to the public in general.

  
ROBERT W. PICKRELL  
The Attorney General

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