June 10, 1954
Opinion No. 54-78

TO: The Honorable Howard Pyle
Governor of the State of Arizona
Capitol Building
Phoenix, Arizona

RE: When bids are required when purchase is made by a School District.

QUESTION: Must a School District request bids when a purchase is made?

Section 54-416, A.C.A. 1939, as amended, sets forth the powers and duties of the boards of trustees of the school districts. Among other powers, the board may purchase equipment. The appropriate part of said section is as follows:

> "54-416. Powers and duties of board of trustees.--The powers and duties of the board of trustees of school districts are as follows:
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> 3. The board shall manage and control the school property within their districts; purchase school furniture, apparatus, equipment, library books, and supplies for the use of the schools; rent, furnish, repair and insure the school property of the district; when directed to do so by a vote of the district, construct school buildings, or purchase or sell school sites; make, in the name of the district, conveyances of all property belonging to the district and sold by them, and employ under written contract, all employees of the schools. * * *"
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No mention is made in this section of requiring bids before a purchase is made. Other laws which apply to a school district and require bids are as follows:

Sections 9-104 and 9-105, A.C.A. 1939, as amended, require bids to be submitted whenever any public building is to be erected. The appropriate part of Section 9-105, supra, is as follows:

> "9-105. Notice to contractors to submit bids.--Every agent shall, upon acceptance and approval of the working drawings and specifications, cause to be published a notice to contractors of intent to receive bids and to contract for the erection of the proposed structure, and stating:"
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> * * * * *

Section 10-607, A.C.A. 1939, requires bids whenever any bonds are sold by a political subdivision. Said section is as follows:

> "10-607. Sale of bonds--Forfeiture of deposit.--Before the sale of any of such bonds the governing body, or board, shall at a meeting thereof enter upon its record an order directing the sale of said bonds and the date and hour of same, and cause a copy of said order to be published for at least four (4) consecutive weeks before said sale in one or more designated daily or weekly newspapers, together with a notice that sealed proposals will be received by them for the purchase of said bonds, on the date and hour named in said order. At said time the governing body or board shall meet and open all sealed proposals received, and award the purchase of said bonds to the highest and most responsible bidder, at not less than par with accrued interest. All bids shall be accompanied by a certified check for not less than five (5) per cent of the total amount of such bid. The governing body or board may reject any and all bids, and return such certified checks; but if the bidder shall not carry out the terms of his proposal to purchase, if awarded to him, the certified check shall be cashed and the amount thereof forfeited as stipulated and liquidated damages."

Section 10-610, A.C.A. 1939, as amended, requires that when bonds are issued for the purpose of erecting any public

building, there shall be requested bids. The pertinent part of said section is as follows:

> "10-610. Erection of buildings for which bonds voted--Method of payment.--If such bonds are issued for the purpose of erecting and furnishing any public building, the board of supervisors, for a county or school district, and the governing body of a city, town, or other municipal corporation, shall adopt plans and specifications for such building, and as soon as practicable thereafter, advertise for bids for the erection and furnishing of said building, stating a day and hour, not less than forty (40) days from the date of such notice, when said bids shall be received and opened. * * *"

However, in this instance the Board of Supervisors acts for the school district.

In Chapter 54, which deals with public schools, the only statute that requires that bids be made is Section 54-1103, A.C.A. 1939. Here the duty, however, is on the superintendent of public instruction. This statute requires that bids must be required when textbooks are purchased. Said section is as follows:

> "54-1103. Advertising for bids.--On or before the twenty-fifth day of May in any year before the expiration of a contract for furnishing textbooks for the common schools, the superintendent of public instruction shall advertise, for thirty (30) days in a daily paper, published at the state capital, for bids for furnishing the required number of textbooks. The bids shall be opened in the presence of a majority of the members of the state board of education, and the contract shall be let to the lowest responsible bidder."

With the exception of the above-mentioned statutes, our research reveals no other instance when a school district must advertise and request bids before making a purchase. Various other political bodies have this limitation, such as Section 17-312, A.C.A. 1939, which requires a County Board of Supervisors

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to advertise when they make a purchase of supplies of a certain amount.

Therefore, it would be a matter of policy which would have to be determined by each school district to decide if they wish to advertise for bids on purchases made. The only mandatory cases being the aforementioned statutes. If it is felt that there is a need to make it mandatory upon a school district to require bids when making purchases, the State Legislature may so provide.

Since the purchase of a tractor would not fall within any of the quoted statutes, it would not be necessary for a school district to require bids. The school district may, however, do so as a matter of policy.

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