

It might be noted in passing that the proposed study is compatible with the will of Congress as expressed in numerous provisions of federal statutes. "The Federal Highway Administrator, in cooperation with the State highway departments of the respective States, is * * * directed to investigate the service afforded to traffic, population, and lands by all highways of each State, as determined by State-wide surveys adequate for the purpose. * * *" 23 U.S.C.A. sec. 20a. "The Secretary of Commerce is authorized * * * to engage in research on all phases of highway * * * development [and] design * * * and traffic conditions * * *. The Secretary may carry out the authority granted * * * in connection with any * * * State agency * * *." 23 U.S.C.A. sec. 21-1(a). "The Secretary of Commerce is directed to * * * expedite * * * tests * * * by the Highway Research Board * * * in cooperation with the Bureau of Public Roads, [and] the several States * * * for the purpose of determining the maximum desirable dimensions and weights for vehicles operated on the Federal-aid highway systems * * *." 23 U.S.C.A. sec. 158 (k). The Secretary of Commerce is authorized in cooperation with State highway departments to make a study of the whole question of the sharing of highway costs by vehicles in relation to their dimensions and weight. 23 U.S.C.A. sec. 174(b). The Secretary of Commerce is directed to make available to State and local governments scientific and technical information of every sort. 15 U.S.C.A. sec. 1152.

The proposed agreement, while vesting "administrative responsibility" for the study in the highway departments of Pennsylvania and New Jersey, nevertheless, provides for one representative of the Federal Bureau of Public Roads on the Policy Committee and two representatives of the Bureau of Public Roads on the six-member Executive Committee. Sec. 3.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: WILLIAM L. BOYAN
Deputy Attorney General

JULY 31, 1958

HONORABLE PHILLIP ALAMPI
Secretary, Department of Agriculture
One West State Street
Trenton, New Jersey

FORMAL OPINION 1958—No. 10

DEAR SECRETARY ALAMPI:

The poultry industry of New Jersey through the State Poultry Association and various marketing groups has recommended that specifications for the purchase of eggs for State institutions be changed to limit purchases to those produced within the State. You inquire as to the propriety of such action.

The Director of the Division of Purchase and Property in the Department of the Treasury is vested with the powers, duties and responsibilities involved in the efficient operation of a centralized State purchasing service. *N.J.S.A.* 52:27B-56. Among those powers is the authority, in consultation with heads of departments, to

develop standard specifications for all commodities commonly purchased. *N.J.S.A.* 52:27B-58. It is directed that he shall:

"a. Determine and establish and from time to time change standards and specifications according to the needs of all using agencies so far as their needs are in common, and for groups of using agencies or for single using agencies so far as their needs differ;

"b. Fix physical or chemical formulae and otherwise determine the service, quality, fitness and suitability of all articles tendered or furnished;"

N.J.S.A. 52:18A-19 and 52:27B-61 provide a procedure whereby detailed applications and schedules for all articles to be purchased are to be submitted to the Director. He shall then arrange such schedules or parts thereof for purchase and contract in the manner best calculated to attract competition and advantageous prices. Contracts or orders for purchases are to be awarded to the lowest responsible bidder meeting all specifications and conditions.

While, as stated in your letter, the Division of Purchase and Property and your department want to do all possible to favor taxpayers and citizens of New Jersey and give every marketing advantage to New Jersey products, there is to be considered the legislative mandate that the Director shall "attract competition" and obtain "advantageous prices." No geographical limitation is placed on the sources of supply. It is not indicated in any way that the Director should be confined to New Jersey in his purchasing operations. If a responsible non-New Jersey producer is able to furnish the same quality egg at a lower price than New Jersey producers, then under present legislation the Director is bound to award the contract to him. The purpose of the statute is to secure to the State the advantage of competition in the furnishing of all articles. *Cf. Asbury Park Press v. City of Asbury Park*, 23 *N.J.* 50 (1956). All persons, within and without the State, shall have a fair opportunity to bid upon equal terms—the object being to secure economy in government, to prevent fraud, favoritism and extravagance. *Cf. Marangi Bros. v. Bd. of Com'rs. of Ridgewood*, 33 *N. J. Super.* 294, 303 (*App. Div.* 1954).

The State is required by *N.J.S.A.* 52:18A-19 and 52:27B-61 to award the instant contract to the "lowest responsible bidder," and it cannot evade that obligation through indirection by changing its specifications in such a manner as to eliminate prospective bidders. Such specifications would not be consistent with the requirement that State work is to be given to and done by the lowest responsible bidder. In *Frame v. Felix*, 167 *Pa.* 47, 31 *Atl.* 375 (*Sup. Ct.* 1895) it was held that a provision in the specifications of a municipal contract requiring the contractor to employ no one not a citizen of the United States and to pay not less than a stipulated wage per day was inconsistent with the law requiring municipal work to be let to the lowest responsible bidder.

Whether the interest of the citizens of this State will best be served by the purchase of only New Jersey produced eggs for State institutions is not a question to be answered by administrative fiat. If it is to be the policy of this State to deliberately preclude those from without the State from a chance to contract for State business then that decision lies with the Legislature. Until such time as it speaks, administrative officials concerned with purchasing are neither geographically limited by statute nor authorized to impose such limitations, except for such territorial considerations as may be inherent in requirements of freshness and like quality factors.

Trade barriers should not be erected or extended by implication. Where the Legislature has desired to prefer New Jersey citizens it has clearly manifested its in-

tent. See *R.S.* 52:36-3 (printing to be done within the State) and 34:9-2 (preference in employment of New Jersey citizens in construction of public works). In like manner it has affirmatively designated that American products shall be used in State work and on public works. *R.S.* 52:32-2; 52:33-2. Having enacted such legislation as above and having ventured only into the field of printing, it seems fair to say that the legislators are well aware of the considerations so colorfully stated by Justice Terrell in his dissenting opinion in *State v. Lec*, 150 *Fla.* 35, 7 *So. 2d* 110 (*Sup. Ct.* 1942), involving a statute which required the letting of certain contracts to bidders who operated their plants within the State. He stated:

“[The statute] has no place in a world committed to the good neighbor policy. It should under no circumstances be extended to doubtful cases. It is about as congenial to the good neighbor policy as a brace of tom cats would be to each other if thrown over the clothes line with their tails tied together. In fact the Florida orange grower of the good neighbor era arises in the morning to the chant of Old Domineck who was imported from Missouri as a day old chick, he dons a shirt made in New Jersey, slips into a pair of overalls made in North Carolina of Alabama cotton, and a pair of shoes made in St. Louis from the hide of a Texas steer; he turns on his radio made in New York and listens to a Columbia announcer tell the world how his own boys are saluting Japs in Java with machine guns and how his neighbor’s boys are saluting the Fuhrer from Iceland with bombing planes. If the price of oranges is looking up, his wife greets him at dinner with a Kansas City steak broiled in a Pittsburgh skillet, flanked with Georgia grits lubricated with ham gravy from an Iowa pig, tapered off with a cut of apple pie made of Virginia apples embroidered with Wisconsin cheese and a cup of coffee from Brazil, sweetened with Cuban sugar and stirred with a silver spoon from Nevada. He drives to work in an automobile made in Detroit, cultivates his grove with a Chicago plow, hauls his oranges in a Michigan truck empowered by Oklahoma gas, and hopes that people from everywhere, even California, will drink his orange juice. He sleeps on a Grand Rapids bed, sits on a High Point chair, cooks on a General Electric stove, and gets his religion and code of morals from the Bible that came from Egypt, Babylon, and Israel and is governed by the Common Law of England after being tintured with the civil law from Rome; in fine, he patronizes the four points of the compass and is such an embodiment of the good neighbor philosophy that the cackle of his hens is about the only homespun product on the grove.”
(at p. 116)

We believe the Legislature was conscious of the thoughts so ably expressed above and did not intend in any way to restrict public officials in their purchasing activities.

Having concluded that the Director is not vested with the authority to effectuate the proposal, we need not consider the question of whether such State action would contravene the Commerce clause and the Fourteenth Amendment of the United States Constitution. See *People v. Coler*, 166 *N.Y.* 144, 59 *N.E.* 776 (*Ct. App.* 1901) [statute required stone used in municipal work be worked, dressed or carved within State]; *Knight v. Barnes*, 7 *N.D.* 591, 75 *N.W.* 904 (*Sup. Ct.* 1898) [statute required printing be done within State]; *Ex parte Gemmill*, 20 *Idaho* 732, 119 *Pac.* 298 (*Sup. Ct.* 1911) [statute required printing be done within State].

Therefore, it is our opinion that the Director of the Division of Purchase and Property may not limit the purchase of eggs for State institutions to those produced in New Jersey.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: HAROLD J. ASHBY
Deputy Attorney General

SEPTEMBER 25, 1958

HONORABLE EDWARD J. PATTEN
Secretary of State
State House
Trenton, New Jersey

FORMAL OPINION 1958—No. 11

DEAR MR. PATTEN :

We have been asked to describe the duties of the Secretary of State ancillary to the submission to the people, pursuant to Article IX, Section IV, of the New Jersey Constitution of 1947, of the proposed amendment to Article VIII, Section IV, paragraph 2 of the Constitution. The proposed amendment was agreed to by the Legislature on June 16, 1958 in Senate Concurrent Resolution No. 16, which reads as follows :

“Be It Resolved by the Senate of the State of New Jersey (the General Assembly concurring) :

1. The following proposed amendment to the Constitution of the State of New Jersey is hereby agreed to :

PROPOSED AMENDMENT

Amend Article VIII, Section IV, paragraph 2 of the Constitution to read as follows :

2. The fund for the support of free public schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of free public schools, for the equal benefit of all the people of the State; and it shall not be competent, except as hereinafter provided, for the Legislature to borrow, appropriate or use the said fund or any part thereof for any other purpose, under any pretense whatever. The bonds of any school district of this State, issued according to law, shall be proper and secure investments for the said fund and, in addition, said fund, including the income therefrom and any other moneys duly appropriated to the support of free