

**OPINION
58-46**

March 10, 1958 (OPINION)

COMPETITIVE BIDS

RE: Preference - Residence

We have received your request for an opinion dated March 6, 1958.

You state your board advertised for bids on furniture and equipment for a new building at the Mayville Teachers College. The low bidder was Remington-Rand of Minneapolis, Minnesota, but they were not two percent lower than the next lowest North Dakota bidder. This bid and quotations came from the Minneapolis office.

Your question is, can Remington-Rand, under the circumstances, be considered a North Dakota bidder?

Section 44-0801 of the 1957 Supplement to the N.D.R.C. of 1943 reads as follows:

The board of administration, or any board, commission, city council, board of city commissioners, board of education, board of park commissioners, school board, board of village trustees or any other governing body of any political subdivision of the state, or of any state institution, in purchasing any goods, merchandise, supplies, or equipment of any kind, shall give preference to bidders, or sellers resident in North Dakota. In specifying or purchasing goods, merchandise, supplies, or equipment to be purchased, such board shall not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, where the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. Utility, fitness, and quality being equal, the bid or offer of a resident North Dakota bidder or seller shall be accepted, when such bid or offer is not more than two percent higher than that of a low bidder or seller who is not a resident of this state."

Section 44-0802 of the N.D.R.C. of 1943 defines a resident of North Dakota bidder and reads as follows:

"The term 'a resident North Dakota bidder or seller' when used in this chapter, unless the context thereof clearly provides otherwise, shall mean a bidder or seller who shall have maintained a bona fide place of business within this state for at least one year prior to the date on which a contract was awarded."

It seems obvious that a Minneapolis, Minnesota firm cannot qualify as a resident North Dakota bidder, and we, therefore, hold that your board cannot accept the Remington-Rand bid in this instance.

LESLIE R. BURGUM

Attorney General