

Opinion No. 100.

Unfair Competition and Discrimination—State Purchasing Agent—Chapters 42 and 80, Laws of 1937, Not Applicable to.

HELD: Chapter 80, relating to unfair competition and discrimination.

and Chapter 42, relating to contracts for the purchase and sale of Trade-Mark products, do not amend the law requiring the State Purchasing Agent to award contracts to the lowest responsible bidder, since these acts do not affect the State of Montana as such in its purchases of needed supplies and equipment.

May 11, 1937.

Hon. A. W. Engel
State Purchasing Agent
The Capitol

Dear Mr. Engel:

You advise that on May 7, your department "will open bids on approximately \$32,000 worth of light trucks and commercial cars," and you inquire whether under the provisions of Chapters 42 and 80, Laws of 1937, it will be lawful for any manufacturer of motor vehicles to submit a bid or offer to sell a motor vehicle at a price lower than his regular advertised retail price for such vehicle, or to bid or offer to sell a motor vehicle at a price lower than such motor vehicles can be purchased by a retail dealer selling said manufacturer's product.

Section 293.3, R. C. M. 1935, provides:

"The state purchasing agent in making purchase of supplies and equipment under the provisions of this act, or under the laws of the state of Montana must advertise as hereinafter provided, and award contracts in the name of the state of Montana for such supplies and equipment to the lowest responsible bidder, except as hereinafter provided."

It has been the practice for years for the state of Montana to purchase supplies and equipment at a price lower than the regular advertised retail price and at a price lower than can be purchased by retail dealers selling manufacturers' products. Such practice has not been the source of complaint among regularly established dealers in such products, but, on the other hand, in view of its large purchases in wholesale quantities, has resulted in great savings to the taxpayers of Montana. Such practice was not the cause for the enactment of either Sections 42 or 80, Laws of 1937. The purpose of

Chapter 80, relating to unfair competition and discrimination was to prevent unfair competition between dealers in selling their products in general trade and to ordinary customers, and was particularly intended to prevent certain unfair practices which, as stated in Section 1 of said Chapter 80, "discriminate between different sections, communities or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing such commodity, product or service at a lower rate in one section, community or city, or any portion thereof, than in another after making allowance for difference, if any, in the grade or quality, quantity and in the actual cost of transportation from the point of production, etc.," and to prevent the vicious practice by some merchants of selling articles below cost, with the intent of destroying a competitor or preventing competition. These practices among certain dealers and stores were well known and it was the purpose of said Section 80, to prevent them.

We think that if the legislature had intended, by either Chapter 42 or Chapter 80, to prevent the state from advertising for bids and purchasing from the lowest responsible bidder, as required by Section 293.3, it would have expressly so provided. Repeals by implication are not favored and we do not think that the legislature intended that the state of Montana, which purchases supplies and equipment in wholesale quantities, should be placed in the same class as the buying public.

It is therefore our opinion that neither Chapter 42 nor Chapter 80 has any application and that it is the duty of the state purchasing agent to follow the mandate of Section 293.3, and to award contracts for supplies and equipment to the lowest responsible bidder, in the same manner as it has heretofore done.