

Opinion No. 49-5226

June 21, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Clyde O. Faulk, Registrar Contractors' License Board P. O. Box 1179 Santa Fe, New Mexico

Re: Contractor's License, Building small structures to house improvements; air conditioning.

OPINION

{*55} In reference to your letter dated June 6, 1949, requesting an opinion as to whether or not the construction of a small building to house water pumps by the vendor comes within the definition of "contractor", thereby necessitating the vendor's procuring a license.

You further inquire as to whether or not the installation of air conditioning equipment adds to or improves the building so as to bring such installation within the definition of "contractor", thereby making it necessary for the person making the installation to procure a license.

Receipt is acknowledged of the copy of the opinion of Mr. W. Peter McAtee, attorney at law, Albuquerque, in connection with the questions presented.

Section 51-1903 of the New Mexico 1941 Compilation, as amended by the Laws of 1947, reads as follows:

"A contractor within the meaning of this act is a person, firm, corporation, copartnership, association or other organization, or any combination of any thereof, who for either a fixed sum, price, fee, percentage, or other compensation other than wages, undertakes or offers to undertake, or purports to have the capacity to undertake to construct, alter, repair add to or improve any building, {*56} excavation, or other structure, project, development or improvement, or any part thereof; provided, that the term contractor, as used in this act, shall include sub-contractor, but shall not include any one who merely furnishes materials, or supplies without fabricating the same into, or consuming the same in the performance of the work of the contractor as herein defined. Provided nothing herein shall be construed to apply to any construction or operation incidental to the construction or operation incidental to the construction and repair of any highway, to a public utility in the construction, reconstruction, operation or maintenance of its plant other than construction of buildings; or to the drilling, testing, abandoning or other operation of any petroleum or gas well, or to geophysical or similar exploration for oil or gas, and provided further that no railroad company shall be construed to be a contractor."

From the above it is clear that any person who undertakes to construct any building comes within the meaning of the term "contractor".

The next question presented is what constitutes a building. Webster defines "building" as an edifice, framed or constructed, designed to stand more or less permanently and covering a space of land for use as a dwelling, **store house**, factory, shelter for beasts or some **other useful purpose**.

I have been unable to find any New Mexico decision which may be of assistance in clarifying the definition. However, definitions of the word "building" have been made in other jurisdictions. I quote from a few of the decisions:

"The word "building" includes only those structures which have a capacity to contain and are designed for the habitation of man or animals, or the sheltering or property. Hopkins v. Department of Labor and Industries, 67 P.2d 872, 875, 190 Wash. 251.

"A "building" is a fabric or edifice, such as a house, church, or the like, designed for the habitation of men or animals or for the shelter of property. Taken in its broadest sense, it can mean only an erection intended for use and occupation as a habitation or for some purpose of trade, manufacture, ornament or use, constituting a fabric or edifice such as a house, a store, a church, a shed. It is a fabric or edifice constructed for use or convenience as a house, church or shop, and must be permanent and designed for habitation of men or animals or the shelter of property. Sacks v. Legg, 219 Ill. App. 144."

"All permanent structures intended to shelter human beings or domestic animals, or to receive, retain, or confine the goods in which a person deals, or to house the tools or machinery he uses, or the persons he employs in his business, are commonly called "Buildings". An ordinance providing that no person shall use any "engine in any building" in a fire precinct without the written consent of the city engineer includes a structure erected for an engine and consisting of a roof made of boards and roofing paper and supported by rows of posts and fire walls composed of boards and piles of wood. City of Concord v. Morgan, 64 A. 725, 726, 74 N.H. 32."

It seems to be generally held that a structure designed and erected for the shelter of property or to house tools or machinery is a building. It is, therefore, my opinion that a person who is engaged in the business of selling water pumps and in the completion of the sale undertakes to {57} construct and does construct a shed or building to house the water pumps sold is a contractor within the meaning of the act and, therefore, must procure a license prior to the erection of said building or shelter.

In the consideration of your second question, namely, the installation of air conditioning equipment, it is my opinion that such installation adds to and improves the building wherein the installation is made, and the person engaged in making such installation is a contractor within the meaning of the act, and must procure proper license prior to the making of such installation.