

## Opinion No. 50-5292

April 14, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** E. Ray Phelps Assistant District Attorney Union County Clayton, New Mexico

{\*144} This will acknowledge receipt of your letter dated March 30, 1950 requesting an opinion as to whether or not a speculative builder is covered by the Contractors Licensing Act.

§ 51-1901 of the New Mexico Statutes Annotated, 1941 Compilation, reads as follows:

"It shall be unlawful for any person, firm, copartnership, corporation, association or other organization, or any combination of any thereof, to engage in the business or act or offer to act in the capacity or purport to have the capacity of contractor within this state without having a license therefor as herein provided, unless such person, firm, copartnership, corporation, association or other organization is particularly exempt as provided in this act. Evidence of the securing of any permit from a governmental agency or the employment of any person on a construction project shall be accepted in any court as prima facie evidence of the existence of a contract."

§ 51-1903 of the 1941 Compilation, Pocket Supplement, reads as follows:

"A contractor within the meaning of this act is a person, firm, copartnership, corporation, association or other organization, or any combination of any thereof, other than those engaged in highway or railroad construction, 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 and building, excavation, or other structure, project, development or improvement, other than to personality, or any part thereof; provided, that the term contractor, as used in this act, shall include subcontractor, but shall not include anyone 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."

The definition of a contractor as given in the above quoted section is broad, clear, and definite.

Now, as to the meaning of a speculative builder, Webster's New International Dictionary, Second Edition, defines speculative builder as one who engages in business out of the ordinary, or by {\*145} dealing with a view to make a profit from conjectural fluctuations in price rather than from the earnings of ordinary profit or trade, or by entering into a business venture involving unusual risks for a chance of an unusually large gain or profit.

The Contractors Licensing Act is very broad and the penalties for its violation are rather strict, and so must be strictly construed. For validity, construction, and application of regulations of business of building or construction contractors, see annotation in 118 A.L.R. page 676 to 682.

Therefore, it is my opinion that a speculative builder falls within the scope of the New Mexico Contractor's Licensing Act and he must obtain a license from the Contractors' Board to do business in New Mexico.