

Opinion No. 51-5348

March 29, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable N. R. Reese District Attorney Fifth Judicial District Roswell, New Mexico

{*27} On September 11, 1950, you requested an opinion as to whether or not contractors erecting homes within the Walker Air Base, near Roswell, New Mexico, would be required to apply for contractors' licenses and permits to install plumbing in the homes.

On September 19, 1950, we answered your letter of September 11 and stated that we needed additional facts. Since that time we have ascertained certain facts which are sufficient to arrive at a conclusion in the matter. As I understand these additional facts, the construction of homes is contemplated on the land owned by the United States government, at which Walker Air Force Base is located. We further understand that this land is part of the land that has been given to the exclusive jurisdiction of the United States government, by virtue of sections 8-202, 8-203, 8-204 and 8-207 of New Mexico 1941 Compilation. This law permits the assumption of exclusive federal jurisdiction over lands within the State of New Mexico acquired or reserved by the United States for military and certain other purposes.

Under § 355 Revised Statutes, as amended by the Act of February 1st, 1940, (54 Stat. 19) and by the Act of October 9, 1940 (54 Stat. 1083), it states that unless and until the United States has accepted jurisdiction over the lands acquired, it is to be presumed that no such jurisdiction has been accepted.

It is to be noted that on August 8, 1944, the Secretary of War, Robert B. Patterson, wrote the Governor of the State of New Mexico, John J. Dempsey, to the effect that in view of the above requirements of the statute, accordingly notice was given that the United States accepted exclusive jurisdiction over all lands acquired by it for military purposes within the State of New Mexico. Also, exclusive jurisdiction was accepted over all lands reserved for the public domain for military purposes, over which such jurisdiction had not theretofore been obtained. Governor Dempsey, on behalf of the State of New Mexico, acknowledged receipt of the letter of acceptance.

In the case of *Arledge v. Mabry*, 53 N.M. 303, 197 P. 2d 884, the Supreme Court of the State of New Mexico stated:

"The constitutional provision mentioned in U. S. Const. Art. 1, § 8, cl. 17, giving congress power, among other things: "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all Places purchased by the

Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings.'

"The New Mexico statute whereby consent was given to the United States to acquire any land in New Mexico under the clause of the federal constitution quoted above for sites for arsenals and other purposes was enacted in 1912 as L. 1912, c. 47, the portions thereof material to this controversy, reading:

"The consent of the state of New Mexico is hereby given, in accordance with the seventeenth {28} clause, eighth section, of the first article of the Constitution of the United States to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the state required for sites for custom-houses, court-houses, post-offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

"Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of the state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands.' 1941 Comp. §§ 8-202 and 8-203."

Reading from page 313 in *Arledge v. Mabry*, supra, the court said:

"Furthermore, the term 'exclusive legislation' employed in said Clause 17 of the federal constitution is held to be synonymous with and to carry the same meaning as if the term 'exclusive jurisdiction' had been employed."

Further, on the same page, the court said:

"A state cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

It is evident from the above that the particular territory in question is under the exclusive jurisdiction of the United States government and the laws of the State of New Mexico are not applicable.

It is, therefore, my opinion that neither the contractors' licensing act nor the state plumbing act could be enforced over any person or any matter over territory which is under the exclusive jurisdiction and control of the federal government.