

Opinion No. 53-5653

January 29, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. George R. Roy Office Manager Contractors' License Board P. O. Box 1179
Santa Fe, New Mexico

{*39} On January 27, 1953, you addressed an inquiry to this office containing three questions concerning the sale and erection of prefabricated structures. All of these questions deal with § 51-1903 N.M.S.A., 1941 Comp., which section is 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 {*40} capacity to undertake to construct, alter, repair, add to or improve any building, excavation, or other structure, project, development or improvement, other than to personalty, 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."

We will answer the questions in the order in which they are set out:

(1) **Question:** Do people engaged in the **sale** of prefabricated houses and other structures come under the provisions of the contractors' licensing law, §§ 51-1901 to 51-1920, inclusive, N.M.S.A.?

Answer: Sec. 51-1903, as set out above, designates that to be a contractor one must "undertake to construct, alter, repair, add to or improve" . . . When a person sells a prefabricated structure he is doing a number of the things as set out above. In view of the rule requiring strict interpretation of licensing statutes it is the opinion of this office that a person who sells prefabricated structures is in no way included in the terms and provisions of the contractors licensing law, whether he sells the structure delivered on the building site or whether the structure is sold F.O.B. manufacturer's plant.

(2) **Question:** Is an individual, company, partnership, corporation or association, who erect prefabricated structures after they have been delivered to the building site within the provisions of the contractors' licensing law?

Answer: This office, on April 8, 1942, in Opinion No. 4064 held that house moving and those persons who move houses were not within the contractors' licensing law. This opinion was based upon the strict interpretation of the words "construct, alter, repair,

add to or improve". Thus in the event a house is wholly manufactured and constructed, then moved to a building site, the person that building site does not come under so moving it and so erecting it on the contractors' licensing law; however, in the event the house is prefabricated in sections and moved to the site, then those sections combined and after the combination of those sections the structure becomes complete. Then, and in that event, there is an alteration and construction of a structure.

It is therefore our opinion that in the event a house is wholly constructed elsewhere and moved to the site the person so moving and setting the house upon the site is not within the contractors' licensing law provisions.

It is further our opinion that in the event the prefabrication takes place in sections and the house or structure is completed on the site then the persons completing it, if all the other provisions of the law are applicable (in the event, it is not the buildings or house, etc.) the person so constructing is under the law pertaining to the contractors' licensing board.

(3) **Question:** Is a person, company, partnership, corporation or association, when a completed building is moved from one site to another, included in the contractors' licensing board laws?

Answer: As stated in the answer to question No. 2, Opinion No. 4064, {*41} dated April 8, 1942, involves this point and it is held in that opinion that the mere moving of a completed structure is not within the laws applied to contractors' licensing. The mere fact that minor alterations are required was held in that opinion not to include the house moving or the person doing the minor alterations, as not within the contemplation of the Legislature.

Therefore, it is our opinion that in the event the house is moved after it has been completed the person moving it is not subject to the laws applicable to a contractor's license.

We sincerely hope that this answers your inquiries.

By: Fred M. Standley

Assist. Attorney General