

Opinion No. 53-5714

March 24, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Fletcher A. Catron City Attorney Santa Fe, New Mexico

{*108} On March 3, 1953, you addressed an inquiry to this office asking whether or not the permit fees authorized and enforced under city ordinances of this state are enforceable {*109} against a contractor who has a contract to build for the city, county, state or federal government, and subdivisions thereof, and whether a contractor is exempt from the permit fees by reason of § 203 of the Laws of 1954, which section exempts the United States, the State, countries, cities and subdivisions from payment of the permit fees. The question, however, is relative to the contractors who are erecting public buildings.

In the case of **State of Alabama v. King and Boozer, 62 S. Ct. 43, 314 U.S. 1, 86 L. Ed. 3**, the Supreme Court of the United States held that the sales or privilege tax was leviable against a contractor who had a cost plus fixed fee contract. This is true regardless of the fact that the cost of this contract and the tax levied upon the materials purchased under the contract would be passed on to the government and would be a part of the overhead charge, though the government is exempted from payment of such assessments. The effect of the building permit would be the same as the privilege or sales tax under the rule in the King and Boozer case. Therefore we feel that the permit is leviable against private contractors and, as such, the mere fact that this would be passed on as an overhead charge and figured in the final cost of the building to the city, county, state or federal government is of no consequence.

Therefore it is the opinion of this office that the city can require a permit to be paid by a contractor building a city, county, state or United States' government building and such permit fee would not be a burden or exempt under the laws of the State of New Mexico. We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General