

## Opinion No. 56-6520

September 26, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Guy Mayes, Office Manager, Contractors' License Board, P. O. Box 1179, Santa Fe, New Mexico

You have asked for our opinion on three questions.

The first is as to whether or not persons or corporations contracting to do exploratory drilling for uranium prospectors are exempt from the provisions of the Contractors' License Board law.

Section 67-16-3, N.M.S.A., 1953 Compilation, defining "Contractor", among other things provides that;

"A contractor within the meaning of this act is a person, firm, copartnership, corporation, 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, excavation, or other structure, project, development or improvement, or any part thereof; . . ." (Emphasis Supplied)

Exploratory drilling such as that indicated by you seems to us not to fall as an undertaking "to construct, alter, repair, add to or improve" the things enumerated in the above statute. Thus, the activity in question, in our opinion, is not covered by the terms of the act and therefore those engaged in this activity need not be licensed by your Board.

In your second question you ask whether or not engineering companies or engineers contracting with the Highway Department should be licensed by the Contractors' License Board.

You will note that one of the provisos in Section 67-16-3, N.M.S.A., 1953 Compilation, supra, indicates that the act does not apply to "any construction or operation incidental to the construction and repair of any highway, . . ." You indicate that the rules and regulations of the Contractors' License Board would purport to cover contracts in connection with, among other things, highways and bridges. Apparently in drafting your rules and regulations the statute above has been overlooked, since there is a clear exemption from the act of those persons who either directly or incidentally contract to construct and repair highways. Therefore, if the engineering companies which you refer to are contracting directly or incidentally for the construction and the repair of highways, then the engineering companies or engineers are exempt from the act and need not be licensed by you.

Your third question concerns a situation where mechanical and electrical equipment was installed in a building in Albuquerque. You indicate that electrical contractors not licensed by you and, general contractors who are licensed by you, bid in on this job. You further indicate that a part of the contract was for installation of electrical wiring and equipment and that a part of the contract was for the installation of mechanical equipment. In connection with this situation you ask whether or not the electrical contractors should also be licensed by your Board. You will remember that I briefly discussed this matter with you over the telephone and at that time informed you that prior to our passing on the question we would need to know exactly what the contract required. I am assuming that someone licensed under the Electrical Contractors' law would not have to secure a license from you if he bids in on work covered by the Electricians Act. Section 67-19-1, N.M.S.A., 1953 Compilation, et seq. Thus, whether or not there exists in this contract, work or operations not covered by the Electricians Act, depends upon the terms of the contract itself, and without looking at that contract there is no way by which we can intelligently determine the application of the Contractors and Electricians Acts. We, therefore, refrain from passing upon your third question.

I trust the above helps answer your inquiries.

By: Santiago E. Campos

Assistant Attorney General