

Opinion No. 57-105

May 16, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
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TO: Elery G. Cooper, Office Manager, Contractors' License Board, P. O. Box 1179,
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QUESTIONS

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Are prospect and mining contractors subject to the licensing provisions and regulations as provided for in Article 16, Chapter 67, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

ANALYSIS

Section 67-16-3, N.M.S.A., 1953 Compilation, provides 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, 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 **under take to construct, alter, repair, add to or improve any building, excavation, or other structure,** project, development or improvement, or any part thereof; Provided, that the term contractor, as used in this act, shall include subcontractor, but shall not include any one 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. Provided nothing herein shall be construed to apply to any construction or operation incidental to the construction and repair of any highway, to a public utility in the construction, reconstruction, operation or maintenance of its plant other than construction of buildings; or to the drilling, testing, abandoning or other operation of any petroleum or gas well, or to geophysical or similar exploration for oil or gas, and Provided further that no rail road company shall be construed to be a contractor." (Emphasis supplied).

With reference to the afore quoted section, attention is called to the language underlined whereby is manifest an intent or contemplation of buildings or structures. It

has been suggested that the inclusion of the terms "Excavation", "project and "development" might well be considered as referring to all types of earth or ore displacements, and accordingly cover commonly understood mining operations. It is true that the term "excavation" is, in modern day mining methods, used in a technical sense when referring to open pit or strip type of mining. 36 Am. Jur. 281. As used in the hereinabove considered definition, however, the term "excavation" is so placed in the sentence so as to qualify or describe additions to or improvements of structures as suggested.

Generally speaking, the term "project" is not specifically applicable to prospect or development mining operations, but more recognizable as used in commercial or domestic realty terminology.

It is specifically provided that incidental to drilling, testing or production in connection with oil and gas extraction are exempt from the provisions of the herein considered act. While "It appears to be definitely settled, for example, that a gas well or an oil well cannot be regarded as a mine." 36 Am. Jur. 282, still it may be implied from the afore considered proviso that definable mining operations are sufficiently close in nature and purpose to also be exempt.

In Attorney General's Opinion No. 3244, in considering the Contractors Licensing Act, it is pointed out:

". . . this is a statute which provides rather heavy penalties for its violation, and that being the case it is my opinion that it must be strictly construed and no one included who is not clearly brought within its provisions by the language."

Accordingly, it is our opinion that prospect and contract miners are not subject to the provisions of the Contractors License Act.