

Opinion No. 57-208

August 22, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,
Assistant Attorney General

TO: Mr. Elery G. Cooper, Contractors' License Board, P. O. Box 1179, Santa Fe, New
Mexico

QUESTION

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Does ". . . a company who (which) intends to install a pumping station for the Southern Pacific Pipe Line at Deming, New Mexico, come within the terms and definitions of a 'contractor'?"

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 67-16-3, N.M.S.A., 1953 Compilation, defines the term "contractor" in the following language:

"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; 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 railroad company shall be construed to be a contractor."

In addition to defining a contractor under this law, the aforementioned section also lists certain exceptions. These are supplementary to those subjects found in § 67-16-2, which generally deal with agricultural endeavors.

Attorney General's Opinion No. 3236, dated August, 1939, in discussing a very similar question presents the following:

"Apparently your letter raises the question as to whether or not a pipeline contractor should come within the exemption of the above quoted paragraph (d). It is my opinion that if the parties referred to in Mr. Stamm's letter of August 8 referred to oil companies as persons in the oil business who construct derricks, pipe lines or other operations incidental to the discovery of or the production of oil and gas, then Mr. Stamm's interpretation of the law is correct. However, as it seems to appear from your letter, if Mr. Hanrahan is a pipe line contractor and that is his principal line of work with no financial interest or ownership in an oil company attempting to discover or in the actual production of oil and gas, then in my opinion Mr. Hanrahan would be a contractor as defined under Chapter 197, Section 3, Laws of 1939, and should be required to take out a contractor's license."

From our understanding of your letter and attached inquiry, the company doing the construction work for Southern Pacific Pipe Line, is as a matter of fact a pipeline or pipeline facility construction company, having no real interest in the discovery or commercial use to be made of the pumping station. Accordingly, and in light of the earlier opinion cited, supra, it is our opinion that the answer to your question above put, is in the affirmative.