

Opinion No. 57-96

May 13, 1957

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

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

QUESTIONS

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"Whether or not a carpet company which installs wall to wall carpeting in a home comes within the terms and definitions of a 'contractor.'"

CONCLUSION

No.

OPINION

ANALYSIS

Section 67-16-3, N.M.S.A., 1953 Comp., provides in part 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 **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 herein defined.**" (Emphasis supplied.)

In keeping with Attorney General's Opinion No. 3244, dated August 15, 1939, the above quoted Section, and subsequent provisions made applicable thereto, shall be "strictly construed." Referring specifically to the definition of "contractor," supra, it becomes apparent that the legislative intent was limited to the construction or alteration of premises contemplating a state or condition of permanency. It has been argued that the inclusion of improvements is sufficient in scope to include the type act or attachment as herein contemplated. This interpretation, however, in our opinion cannot be sustained.

Generally, considering the law of fixtures, all extra-structural improvements, furnishings, and decorations are considered as personalty or chattels subject to removal, limited only by manifest intent or state of attachment or annexation. Carpets may generally be included in the term "Furniture" or "household furniture," 12 CJS 1152.

In the instant situation the providing or furnishing of carpeting is to be compared with that of other furnishings. It may be argued, however, that wall to wall carpeting and its installation lends itself to fabrication and improvement of a permanent nature. It is our opinion, however, under the terms of the definition provided, that even wall to wall carpeting, cut and attached to the flooring, is not of such a permanent nature as to render the premises useless or materially damaged with removal thereof. Accordingly, it is our opinion that a company supplying and laying carpeting in a home does not come within the terms and definitions of a "contractor."