

Opinion No. 58-155

July 24, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

TO: Mr. H. B. Wood, Board Manager, Contractors' License Board, P. O. Box 1179, Santa Fe, New Mexico

QUESTION

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Is bowling alley construction subject to regulation under the Contractors' License law?

CONCLUSION

Yes.

OPINION

ANALYSIS

It is our understanding that the bowling alley construction in question is performed in the following manner: The property owner furnishes a building which has been specifically designed, or modified, to accommodate the bowling alley beds. The equipment supplier agrees to build the alley beds and install related machinery thereon. The equipment supplier sends a foreman into the area who assembles a crew and with the arrival of the materials the work is commenced on the alley beds. The wood used is a type of tongue and groove similar to regular flooring. The pieces are cut and fit on the job and the operation is similar to the laying of any hardwood floor except that the tolerances are closer and the work more exacting. It is our further understanding that general building contractors that have been contacted have stated that it is a job they could successfully undertake and not so highly specialized as to be impossible for them to perform. With this factual situation in mind, we proceed to an examination of the Contractors' License Act.

Section 67-16-3, N.M.S.A., 1953 Compilation, defines the word "contractor" and provides in part as follows:

"A contractor within the meaning of this act is a person, firm, copartnership, corporation, association, 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." (Emphasis ours)

The above quoted section was interpreted by our Supreme Court in the case of Fischer v. Rakagis, 59 N.M. 463 (1955), and is dispositive of the question presented. In that case the building contractor asserted that contracts relating to the making and installation of fixtures, such as a bar, were personalty and not within the purview of the Act. The Supreme Court refuted the theory of the contractor that fixtures such as a bar were personalty and held that inasmuch as they were fabricated into the building under a performance contract for a lump sum, the operation was subject to regulation under the Act. See also Attorney General's Opinion No. 5653 (1953-54) wherein this office held that where prefabrication takes place in sections and the structure is completed on the site, the persons completing it, if the other provisions of the Act are applicable, are under the Act.

This office has no hesitancy in holding that bowling alleys and fixtures related thereto, as in the installation of a bar, are fabricated into a building under a performance contract and for a lump sum. It, therefore, follows that the theory laid down in Fischer v. Rakagis, supra, is applicable and the operation in question subject to regulation under the Act.