

Opinion No. 58-226

November 25, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., 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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Does Attorney General's Opinion No. 58-155, issued on July 24, 1958, apply to bowling alley construction in which it is the intent of the parties that such bowling alley shall remain personalty and not become part of the realty?

CONCLUSION

No.

OPINION

ANALYSIS

In Attorney General's Opinion No. 58-155, issued by this office on July 24, 1958, we held on an assumed factual situation that bowling alleys and fixtures related thereto were fabricated into a building under a performance contract and for a lump sum and were, therefore, subject to regulation under the Contractors' License Act.

It is apparent from a reading of the above mentioned opinion that the conclusion therein stated turned upon a determination that bowling alleys and fixtures related thereto are fabricated into a building under a performance contract and for a lump sum and become part of the realty. If, however, a particular bowling alley remains personalty and does not become part of the realty, then such bowling alley construction would not be subject to regulation under the Act.

Our Supreme Court has said in the case of **Porter Lumber Company v. Wade**, 38 N.M. 333, 32 P. 2d 819, that whether or not a particular object is to be considered as personalty or realty depends primarily upon the intention of the parties. Such being the law in this State, we conclude that if it is the intent of the parties that a particular bowling alley and the fixtures related thereto are to remain personalty and not become part of the realty, and such intent is evidenced by their contractual agreement made in good faith and not with the view of circumventing the law in this respect, then such bowling

alley construction is exempt from regulation under the provisions of the New Mexico Contractors' License Act.