

Opinion No. 59-67

June 25, 1959

BY: FRANK B. ZINN, Attorney General

TO: Honorable T. E. Lusk State Senator Carlsbad, New Mexico

A general contractor for the construction of homes and other buildings, but who is not especially licensed as a painter or decorator contractor is not required to subcontract the painting and decorating as his license as a general contractor, under Sec. 67-16-17, N.M.S.A., 1953 Comp., enables him to do the painting or hire help to do it for him.

OPINION

{*108} This is written in reply to your recent request for an opinion on the following question:

Where a person who is a general contractor under Sec. 67-16-17, N.M.S.A., 1953 Comp., for the construction of homes and other buildings, but is not especially licensed as a painting and decorating contractor, is he required to subcontract the painting and decorating to one who is licensed in that particular field?

It is my opinion that a person who is licensed as a general contractor for the construction of homes and other buildings, but is not especially licensed as a painting decorating contractor is not required to subcontract the painting and decorating to one who is licensed in the particular field. A general contractor can either do the painting and decorating himself or hire someone to do it for him.

Section 67-16-17, N.M.S.A., 1953 Comp., reads as follows:

"The contractors' license board may adopt rules and regulations necessary to affect the classification of contractors in a manner consistent with established usage and procedure as found in the contracting and construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage. A licensee may make application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or qualifications. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

Nothing contained in this section shall prohibit a contractor from taking and executing a contract involving the use of two [2] or more crafts, trades or classifications, if the performance of the work in {*109} the crafts, trades or classifications other than in which he is licensed, is incidental or supplemental to the performance of the work and the craft, trade or classification for which the contractor is licensed, Provided, however, that

the performance of the work other than in which a particular contractor is licensed shall be performed by subcontractors licensed to perform such crafts, trades or classifications."

It is specifically stated in the above quoted statute that a licensee may make application for a license in more than one classification if the licensee meets the qualifications prescribed by the Board. No additional application or license fee shall be charged for qualifying or classifying a licensee in additional classifications.

The second paragraph of the quoted statute states specifically that nothing contained in the section shall prohibit a contractor from taking and executing a contract involving the use of two or more crafts, trades or classifications if the performance of the works, crafts or trades is incidental or supplemental to the performance of the work and the craft, trade or classification for which the contractor is licensed. It is commonly known that painting is incidental to the building of homes. It also follows that a general contractor licensed to build homes and other buildings can do or can hire competent painters to do the painting of the homes or buildings constructed.

The only two trades in which a general contractor cannot perform without special licensing are plumbing and electrical installations.

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