

Opinion No. 62-04

January 15, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Shirley C. Zabel, Assistant Attorney General

TO: Mr. Rufus C. Little, Registrar, Contractors' License Board, P. O. Box 1179, Santa Fe, New Mexico

QUESTION

Question

Are salesmen who take orders for remodeling on behalf of licensed building concerns required to be licensed by the Contractors License Board?

CONCLUSION

No.

OPINION

ANALYSIS

As we understand your question, these salesmen go about from place to place and take orders for remodeling homes. They work on a percentage basis for building concerns which are licensed by your Board. The orders are taken by the salesmen on behalf of the building concern involved and the salesmen do not participate in the remodeling activity which results.

In your letter you point out that a contractor is defined in Section 67-16-2, N.M.S.A., 1953 Compilation (P.S.), to include those who work for a price, fee, or **percentage**. We also note that the contractors' license law provides for licensing a person, firm, copartnership, corporation, associations or other organization or any combination thereof, including subcontractors. We think this includes only persons who are parties to the contract and consequently contractors in the technical sense. In the situation you describe, it is the construction concern, not the salesmen, which offers to undertake the remodeling. The salesmen, acting as agents or employees of the licensed firm, are neither bound by the contract nor responsible for its execution. See 2 Am., Jur., Agency, Section 315, Section 344. The provisions of Sections 67-16-14 and 16, N.M.S.A., 1953 Compilation (P.S.), which are designed to induce compliance with the licensing requirements of your Board, do not affect these salesmen who could neither sue on the contract nor enforce a lien.

We therefore conclude that the Board may license persons, firms, partnerships and corporations that are contractors on a percentage basis and otherwise within the coverage of Section 67-16-2, N.M.S.A., 1953 Compilation (P.S.). Agents and employees of contractors need not have a license, even though they are employed on a percentage basis. The salesmen in question, acting as agents of licensed construction concerns and not parties to the contracts they solicit in their company's behalf, need not obtain a license from the Contractors' License Board.