

## Opinion No. 62-92

July 19, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt,  
Assistant Attorney General

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

### QUESTION

#### QUESTIONS

1. Are two contractors (foreign corporations) licensed under the Contractors' License Law as such and who enter into a Joint Venture for the purpose of bidding on a New Mexico project, required to procure a "joint venture" license under paragraph 33, Section 7 of the rules and regulations of the Contractors' License Board?
2. Can a Joint Venture license be procured and a subsequent qualified bid be submitted by the two contractors in question when they have not maintained an office in the state for 90 days prior to licensing?

#### CONCLUSIONS

1. Yes.
2. No.

### OPINION

#### ANALYSIS

1. You will note I have rephrased your questions since information from your office discloses the following:

The two contractors in this case are foreign corporations who hold a current license as such under the Contractors' License Law. They now wish to enter into a "joint venture" on a New Mexico project. In operations of this type it has been a long standing policy of the Board to require and issue a "joint venture" license to the companies involved under paragraph 33 of Section 7, **Changes Affecting Validity of License** of the rules and regulations of the Contractors' License Board, and which is set out as follows:

"The organization of a partnership creates a new legal entity which requires a license, even though one or more of the partners are licensed contractors."

Under the above regulation the question to be decided is whether a "joint venture" can be included in the term "partnership". In 48 CJS 849, 850, the author in an involved discussion on this question points out from numerous citations that a "joint venture" is in the nature of a "partnership" and that it may be regarded as a limited, special, or quasi partnership. A "joint venture" is usually limited to a single transaction and the character of the relationship is more informal than a "partnership", but the rights and liabilities are usually tested by partnership rules. In many decisions it has been broadly held that both "joint venture" and "partnership" are governed by the same rules of law. **Goss v. Lanin**, 170 Iowa 57, 152 N.W. 43. The author also states that some courts have distinguished the two organizations with respect to grievances between the associates themselves. Rather than adhere to the strict partnership rules which require a "formal accounting" in equity some courts in a proper case have allowed one joint adventurer to sue another at law for damages. 48 CJS 848. The New Mexico Supreme Court noted such a distinction in **Culloh v. Doyle**, 40 N.M. 126, 55 Pac. 2d. 739, 740 (1936) and permitted a joint adventurer to sue his associate at law on a breach of the organization contract. The U.S. Court of Appeals, 10th Cir. (N.M.) in a much later case (1960) also noted a distinction, but in that particular instance, said it was "unimportant" and disregarded it. **Homestake Mining Co. v. Mid-Continent Expl. Co.**, 282 F.2d. 787. Whatever distinction may exist in contemplation of law, it is not relevant and determinative of the present issue. The above cited authorities support the conclusion that the term "partnership" as used in the subject regulation includes "joint venture" so as to require such joint venture to be licensed.

2. A "joint venture" license to be granted under the regulation cited and discussed above, must be issued pursuant to Section 67-16-5, N.M.S.A., 1953 Compilation, which is the only method prescribed for the issuance of licenses under the Contractors' License Law. As we have previously held in Attorney General Opinion No. 62-90, foreign corporations in order to qualify for a license under Section 67-16-5, supra, must maintain an office in the state for 90 days prior to licensing and a statutory agent designated for service by the foreign corporation does not of itself satisfy or comply with this requirement. Since your office has disclosed that the two corporations in question have only a "statutory agent" and are not maintaining an office, it is obvious they **are not** qualified to be granted a license pursuant to Section 67-16-5, supra.

Under Section 67-16-3, N.M.S.A., 1953 Compilation (P.S.), no corporation can,

". . . offer to act in the capacity or purport to have the capacity of contractor within the state without having a license therefor as provided in the Contractors' License Law . . ."

The two corporations in this instance are not included in the exceptions to this law which are set out in Section 67-16-2, N.M.S.A., 1953 Compilation of the Contractors' License Law.

In submitting a bid the two corporations "are offering to act in the capacity of a contractor" without having a proper license, and a bid under these circumstances would be invalid under Section 67-16-3, supra, of the Contractors' License Law.

Please note that this opinion applies only to foreign entities.