

## Opinion No. 65-96

June 10, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

**TO:** Alton B. Warren, Assistant District Attorney, Third Judicial District, Court House, Las Cruces, New Mexico

### QUESTION

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The City of Carrizozo is going to ask for bids on a contract to enlarge the facilities at the city dump. Must the contract be let to a licensed contractor?

#### CONCLUSION

Yes.

### OPINION

#### {\*161} ANALYSIS

A contractor is defined in Section 67-16-2, N.M.S.A., 1953 Compilation as follows:

"67-16-2. **"Contractors" defined.** -- A contractor, within the meaning of the Contractors' License Law [67-16-1 to 67-16-19], is a person, firm, copartnership, corporation, association, or other organization, or any combination of any thereof, who for either a price, fee, or percentage 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, the term contractor shall include subcontractor, but shall not include any one who merely furnishes materials, or supplies without fabricating the same into, or {\*162} consuming the same in the performance of the work of the contractor as herein defined; Provided, further, nothing herein shall be construed to apply to a public utility in the construction, reconstruction of buildings; or to the drilling, testing, abandoning or other operation of any petroleum or gas well, or to geophysical or similar exploration for oil or gas; and, Provided, further, no railroad company shall be construed to be a contractor."

Clearly, the work contemplated by the City of Carrizozo falls within the description of work in the quoted Section which must be performed by a licensed contractor. See Section 67-16-3, N.M.S.A. 1953 Compilation. Section 67-16-14, N.M.S.A., 1953 Compilation provides a penalty of a fine or imprisonment or both for a person who acts

in the capacity of a contractor without a license or a person who conspires with another person to violate the Contractors' License Law.

In view of the above noted Statutes it is our opinion that only a licensed contractor should be awarded a contract as described in your question. A contrary conclusion would suggest that the City of Carrizozo should be allowed to encourage violations of the Contractors' License Law.

We think it also important to point out that Section 67-16-3, supra, was amended in the last session of the legislature. The amendment will become effective 12:01, A.M., June 18, 1965. As amended this Section will read in part:

". . . **no contract** within the meaning of the Contractors' License Law shall be **awarded, nor shall any bid on a contract be submitted, received or considered before the issuance of a license**, unless the person, firm, copartnership, corporation, association or other organization is particularly exempt from the provisions of the Contractors' License Law, or as herein otherwise provided." (Emphasis added)

This amendment makes it even clearer that bids should be considered only when they are submitted by licensed contractors.