

## Opinion No. 74-10

March 25, 1974

**BY:** OPINION of DAVID L. NORVELL, Attorney General

**TO:** Mr. Thomas G. Trotter, Executive Director, General Construction Board, P.O. Box 5155, Santa Fe, New Mexico 87501

### QUESTION

Does Section 67-35-52F, NMSA, 1953 (P.S.) require the General Construction Board to take permits and perform inspections on public buildings?

### CONCLUSION

See analysis.

### OPINION

#### ANALYSIS

Section 67-35-52F, NMSA 1953 (P.S.) provides:

"The general construction board shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards."

This subsection confers upon the board the duty and the power to ensure that all public buildings are constructed to conform with applicable codes. The subsection does not specify how the board is to perform this duty; consequently, the board has some discretion in the selection of means to effect the subsection's purpose.

The limits of that discretion are defined by the rule of law that, "...when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied." **Kennecott Copper Corp. v. Employment Security Commission**, 78 N.M. 398, 432 P.2d 109 (1967). See also **Wimberly v. N.M. State Police Board**, 83 N.M. 757, 497 P.2d 968 (1972). The board can select any means or exercise any power that is necessary to make effective and complete its power to ensure that public buildings conform to applicable building codes. The power to require permits and inspections is certainly necessary to effect the board's power to ensure that public buildings conform to codes.

Subsection 67-35-52F, which became law in 1973, partially supersedes Attorney General's Opinion No. 70-38, which you have previously relied upon for guidance in this matter. That opinion concluded, among other things, that municipalities should issue

permits and perform inspections on buildings constructed by political subdivisions if the municipalities had codes conforming to the state code and had properly certified inspectors. Section 67-35-52F places the responsibility for all public buildings on the General Construction Board. The opinion also concludes that permits are not required for public buildings erected by the state. We must now conclude that Section 67-35-52F empowers the General Construction Board to require permits and inspections on state buildings for the reasons set forth in the preceding paragraph.

To summarize, we conclude that Section 67-35-52F empowers the General Construction Board to do anything necessary to ensure that public buildings conform to adopted codes. We also conclude that requiring building permits and performing inspections are powers necessary to ensure this conformity. Insofar as Attorney General's Opinion No. 70-38 is inconsistent with this opinion, it is amended accordingly.

By: Thomas Patrick Whelan, Jr.  
Assistant Attorney General