

## Opinion No. 38-1941

April 29, 1938

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. C. R. McIntosh City Attorney Santa Fe, New Mexico

{\*231} Your letter of even date regarding the proposed sewer project and the filing with the City Council of a bid to perform the required engineering services in connection therewith has just been received.

It is my understanding, from your letter, that up to the present time this individual has not complied with Chapter 45 of the Session Laws of 1935 in so far as registration and qualification of engineers under that Act is concerned.

You have referred in your letter to Section 20 in regard to public work, and in this connection it appears that the provisions of this statute are specific and definite and the language seems to set forth an absolute inhibition against the employment of an engineer for such public work by a city or town, or County or other political subdivision unless the plans and specifications and estimates have been prepared by and the construction executed under the direct supervision of a registered professional engineer.

It is true that certain exemptions are set forth in Section 21 of the Act, but my interpretation of these exemptions is that they are applicable only to the individual engineer and that there is no necessity for reading these provisions in connection with the above mentioned Section 20.

You have also made reference to Section 22, which is the provision in regard to reciprocity, and I am inclined to agree with your construction of this section, that it is merely permissible and not mandatory.

At any rate, the facts as I gather them from your letter reveal that the individual mentioned by you is not at this time a registered engineer of this state, and while in the future he may be able to qualify by complying with the New Mexico laws, nevertheless the fact remains that the City is confronted with the proposition of entering into a contract with a person who is not at present properly qualified, and it would be my viewpoint that under all of the circumstances it would not be advisable for the city to take this step.

I might add that in view of the specific provisions of Section 20, I doubt seriously if any contract made between the city and this particular individual at this time would be valid and binding, and, in all probability, such a contract would be an ultra vires act of the City Council, and the insertion of a clause to the effect that the contract should not be

binding until he procured a license and complied with the law would not, in my opinion, lend any additional validity to the contract.

My suggestion is that you, as City Attorney, advise the City Council definitely that no contract should be entered into with any individual until full compliance is had with the New Mexico statutes.