

## Opinion No. 39-3244

August 15, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. S. L. Kirk, President, New Mexico Contractors Licensing Board, Santa Fe, New Mexico.

{\*93} I have examined the enclosed letter which you handed me raising the question of whether or not one selling and erecting neon signs and painting signs on buildings comes within Chapter 197, Laws of 1939.

This opinion necessarily must cover two questions, (1) whether the person manufacturing neon signs and erecting and attaching them to buildings all for one price comes within the above law, and (2) whether one who paints signs for compensation other than by salary or wages comes within that law.

As to the first one, if it comes within the definition of "contractors" under that statute, I would say that it probably is exempt by subsection (f) of Section 2 of the act as merchandise, the cost of services for the installation of which is included in the sale price. However, it is quite likely that those signs do not come within the definition of "contractor" under Section 3 in that, although attached to buildings, or erected as separate structures, they no doubt remain as personalty.

As to the second question with respect to sign painters, the question is much closer. I have given it very careful consideration, which accounts for my delay in answering. I have come to the conclusion that sign painters as such, as distinguished from painters who do so as decorators, do not come within the term "contractor" as defined by Section 3 of the act. In my opinion contractors coming within that definition are limited to those who are engaged in the construction, alteration, repair, addition or improvement of any building, excavation, or other structure, project, development or improvement, and I doubt that the painting of a sign on the building for the purpose of identification or advertisement would constitute an addition, alteration, repair or improvement of the building.

At any rate this is a statute which provides rather heavy penalties for its violation, and that being the case it is my opinion that it must be strictly construed and no one included who is not clearly {\*94} brought within its provisions by the language.

You also inquire with respect to the effect of this act on the mechanic lien laws. Section 17 of the act, which deals with this matter, is ambiguous because of an error in punctuation. The text however clearly indicates that said Section 17 should read:

"Any contractor operating without a license as herein provided shall have no right to file or claim any mechanic's lien as now provided by law. But otherwise, neither this entire

act, nor any section thereof is enacted for the purpose of aiding, conflicting with or amending or repealing the present mechanic's lien law of the State of New Mexico, or any part thereof."

Therefore, the only effect of this act on the mechanic's lien laws is that a contractor subject to the provisions of this act cannot file or claim any mechanic's lien.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.