

Opinion No. 39-3251

August 21, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Allen Stamm, State Registrar of Contractors, El Torreon Building, Santa Fe, New Mexico.

{*95} In your letter of August 18 you inquire whether or not a road contractor who, in addition to doing highway construction work, does private paving such as on parking lots for hotels is subject to the provisions of the contractors law which is Chapter 197, New Mexico Session Laws of 1939.

Section 2 of the Act in question states that the law is not to apply to "any construction or operation incidental to the construction and repair of any highway or railroad etc."

Section 3 of the Act defines a contractor, among other things, as persons "other than those engaged in highway and railroad construction."

Reading Sections 2 and 3 of the Act together it would seem that road contractors are immune from the Act only insofar as their operations are limited to the construction and repair of highways, but when such road contractors engage in other types of contractual work covered by the Act they become subject thereto.

Since the paving of private parking lots cannot be said to be a construction or operation incidental to the construction and repair of any highway, it follows that to the extent of such operation such contractors may be required to comply with the Act.

By: FRED J. FEDERICI,

Asst. Atty. Gen.