

**Opinion No. 43-4214**

January 14, 1943

**BY:** EDWARD P. CHASE, Attorney General

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

In your letter dated January 12, you inquire whether fees charged to a contractor should be based upon the total amount of work performed, or merely upon the amount of work performed on a general contract basis, as distinguished from contracts on a cost plus or fixed fee basis. You state that the Board feels that the classification should be based upon the total amount of the work performed either by contract, cost plus, fixed fee, or day wages, if the percentage is paid on wages.

Section 51-1903, of the 1941 compilation, defines a contractor as one who undertakes to perform certain work either for a "fixed sum, price, fee, percentage, or other compensation other than wages." Since day wages are specifically excluded in the definition, I do not believe bona fide wages could be figured in arriving at the total gross contract amounts. Otherwise, the stand which the Board takes, in my opinion, is correct.

By C. C. McCULLOH,

First Asst. Atty. General