

## Opinion No. 43-4305

June 1, 1943

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

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

We have your letter of May 28, 1943, wherein you request an opinion in regard to Section 14, Chapter 197, Session Laws of 1939 (Section 51-1914 of the New Mexico 1941 Compilation). Your specific question is:

"If a contractor has not complied with the law in securing a contractor's license to operate in this state, does the Board have the right to stop the job until the contractor has complied with the law in securing his contractor's license?"

The above mentioned section provides:

"Any person who acts in the capacity of a contractor within the meaning of this act without a license as herein provided, and any person who conspires with another person to violate any of the provisions of this act is guilty of a misdemeanor. and shall, upon conviction thereof, be punished by a fine of not less than one hundred (\$ 100.00) dollars, nor to exceed five hundred (\$ 500.00) dollars, or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment, in the discretion of the court.

"No contractor as defined by Section 3 (Section 51-1903) of this act shall act as agent or bring or maintain any action in any court of the state for the collection of compensation for the performance of any act for which a license is required by this act without alleging and proving that such contractor was a duly licensed contractor at the time the alleged cause of action arose.

"The word 'person' as used in this section includes an individual, a firm, copartnership, corporation, association or other organization. (Laws 1939, Ch. 197, Sec. 14, p. 474.)"

In view of the above section, it is my opinion that the Contractors' Board remedy is limited to having a criminal action brought against the individual contractor, who is subject to the above mentioned penalty. The Board has no power to stop the job. However, I call your attention to the fact that the contractor has no right to bring or maintain any suit for the collection of compensation for the performance of any act for which a license is required. This provision may be brought to the attention of both the violator and the person who is employing the contractor to perform certain acts in violation of this act.

Hoping that the above fully answers your questions, I remain

By HARRY L. BIGBEE,

Asst. Atty. General