

## Opinion No. 45-4711

May 10, 1945

**BY:** C. C. McCULLOH, Attorney General

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

{\*62} I have your letter of April 24, 1945, wherein you state:

"In checking through the Compensation Law, under Section {\*63} 57-910, New Mexico Statutes Annotated, 1941 Compilation, the Board feels that anyone licensed (as a contractor) to do business in the State of New Mexico, that this section would apply if he worked one or more men."

You request an official opinion of this office concerning this matter.

Section 57-910 of the 1941 Compilation provides:

"The extra-hazardous occupations and pursuits to which this act is applicable are as follows: \* \* \* road building and construction, \* \* \* buildings being constructed, repaired, moved or demolished \* \* \*, bridge building, railroad construction work that shall not include railroad construction work of any character when done by the owner or operator of any railroad, \* \* \* is hereby determined to be extra-hazardous."

Any person licensed as a contractor engaged in one of the foregoing activities is engaged in an extra-hazardous activity within the meaning of the Workman's Compensation Act. However, I wish to call your attention to the provisions of Sections 57-902 and 57-904 of the 1941 Compilation. Section 57-902 provides that:

"Every private person, firm, or corporation engaged in carrying on for the purpose of business, trade or gain within this state, either or any of the extrahazardous occupations or pursuits herein named or described and intended to be affected hereby, which shall employ therein as many as four (4) workmen, except as hereinafter provided, \* \* \* Provided, that if any such injury so occurs to any such workman in such service while at work upon any derrick, scaffolding, pole or such structure ten (10) feet or more above the surface of the ground, this act shall apply without regard to the number of workmen employed at the time."

Section 57-904, which concerns the right of an employer to accept or reject the Workman's Compensation Act, likewise refers to employers of four or more employees and provides that they will be conclusively presumed to have accepted the provisions of the act unless, prior to the date such employer becomes the employer of four or more persons, he shall have filed with the clerk of the district court his rejection of the provisions of the act. It is further provided that an employer of three or less employees may become subject to the act by filing in the office of the clerk of the district court of

the county in which such workman is or it is contemplated at the time of such agreement such workman is to be employed, a written notice to the effect that he accepts the provisions of this act.

In view of the foregoing, it is pointed out that most building contractors, painters, and other types of contractors employ men more than 10 feet or more above the surface of the ground and in such instances an employer is under the Workman's Compensation Act even though he employs only one man. It is my opinion, however, that except as provided in the above referred to proviso, that even though a contractor be engaged in an extra-hazardous activity, he is not subject to the Workman's Compensation Act unless he specifically elects to come under the act when such contractor employs less than four employees. However, if a contractor employs four or more employees, he is subject to the provisions of the Workman's Compensation Act unless he has followed the statutory procedure of rejecting such provisions.

By HARRY L. BIGBEE,

Asst. Atty. General