

Opinion No. 47-5010

April 14, 1947

BY: C. C. McCULLOH, Attorney General

TO: Lynell G. Skarda District Attorney Ninth Judicial District Clovis, New Mexico

{*32} This will acknowledge receipt of your letter of April 4, 1947, in which you ask us to reconsider a matter heretofore discussed, and render our opinion as to whether Section 51-1905 (c), found in a supplement to New Mexico Statutes, 1941 Compilation, is unconstitutional.

Section 51-1905 (c), New Mexico Statutes, 1941 Compilation, provides in part as follows:

"No license shall be issued to any individual, firm, partnership, or company, that is not a resident of the state of New Mexico for ninety days, unless such person, firm, partnership, or company has maintained an office in the State of New Mexico for at least ninety days preceding the filing of an application for a license."

The question presented is whether the requirement that a person maintain an office in this state for a period of ninety days before being eligible to become licensed as a contractor is discriminatory as against non-residents and, therefore, unconstitutional.

Since our Supreme Court has not passed directly on this question, I can only give you the benefit of my research and conclusions.

Generally, in classifying for purposes of legislation, lawmakers are accorded a wide field of choice and their groupings will not be disturbed because the basis adopted therefor may appear unreasonable, if it plausibly could have seemed reasonable to the lawmakers. (State v. Pate, 47 N.M. 182)

No definite rule can be laid down as to when classifications for purposes of legislation is justified, and special circumstances of each case govern the decision. (State v. Pate, supra)

You will note that Section 51-1905 (c), above, requires **every** applicant to be a **resident** for 90 days **or** maintain an office in this state for 90 days. The requirement of establishing an office for 90 days applies to **all** those who have not been residents of this state for 90 days; it applies to all persons within the class. The reason for the requirement is to enable the Contractor's Licensing Board to determine the credit rating and general qualifications of an applicant.

If a technical interpretation is taken of the statute, it might appear that a contractor would be violating the law for 90 days by maintaining an office in this state without a

license. As a matter of fact, however, the contractor would only be maintaining an office in this state for the purpose of qualifying as an applicant; not for the purpose of doing business as a contractor. Furthermore, it is generally known that the requirement of maintaining an office in this state is accomplished through an attorney in this state and his office would constitute the applicant's office.

In view of the fact that the requirement in Section 51-1905 (c) applies to all those applicants similarly situated, and in view of the fact that there appears to be a reasonable {33} basis for the requirement, I believe that the statute would be held constitutional in the courts.

By WM. R. FEDERICI,

Asst. Atty. General