

**Opinion No. 47-5097**

November 7, 1947

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

**TO:** Mr. Donald Hallam Assistant District Attorney Hobbs, New Mexico

{\*105} This will acknowledge receipt of your letter of November 5, 1947 in which you request an opinion on the following question:

Does a corporation desiring to build housing facilities for rent upon their own real property within the State of New Mexico, and who will do the building itself, have to first obtain a contractor's license in order to build said units?

The facts as you state them appear as follows: The corporation {\*106} is a New Mexico corporation, domiciled in Hobbs, New Mexico. The present stockholders of said corporation are building contractors who desire to construct their own houses on their own property. No contracts will be let to others for building said units and said units are to be rented by said corporation.

Section 51-1903, found in Supplement to N.M. S. A. 1941 Compilation, defines a contractor as follows:

"A contractor within the meaning of this act is a person, firm, copartnership, corporation, association, or other organization, or any combination of any thereof, who for either a fixed sum, price, fee percentage, or other compensation other than wages, undertakes or offers to undertake, or purports to have the capacity to undertake to construct, alter, repair, add to or improve any building, highway, excavation, or other structure, project, development or improvement, or any part thereof; \* \* \*."

The term "contractor" as it is generally defined by the Courts means one who agrees with another person to perform services or supply goods at a fixed price, etc. In other words, you will note that the definition includes the element of agreement with another person. (9 Words and Phrases 325.) See also People vs. Moss. 87 P. 2d 932.

I do not believe that the wording of the definition of contractor as set forth in our statute would warrant a construction that would hold that under the facts in this case the corporation would be a contractor.

Limited strictly to the facts in this case, I am of the opinion that a New Mexico corporation, domiciled in this state, whose stockholders are building contractors who desire to construct their own houses for rent on their own property, does not have to first secure a contractor's license in order to build said structures.

By WM. R. FEDERICI,

Asst. Atty. General