

Opinion No. 53-5873

December 17, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. P. Corcoran Plumbing Engineer Plumbing Administrative Board 1914
Broadway NE Albuquerque, New Mexico

{*302} On November 6, 1953, you addressed an inquiry to this office as to whether or not a licensed plumber may be awarded a contract with the State for the construction of water systems.

Section 6-501, N.M.S.A., 1941 Comp., requires every contract with the State to be given to New Mexico contractors. Section 6-704, N.M.S.A., {*303} 1941 Comp., Pocket Supplement, defines the method of awarding contracts. Section 6-502, N.M.S.A., 1941 Comp., defines who is a New Mexico contractor, and reads as follows:

"6-502. 'NEW MEXICO CONTRACTOR' DEFINED. -- For the purpose of this act, a New Mexico contractor or contractors is defined to be:

- (a) A person or persons who are residents of, and qualified electors in the state of New Mexico, or corporations incorporated under the laws of this state and who maintain their principal office or place of business, and are taxpayers in this state.
- (b) Foreign corporations authorized to do business under the laws of this state, or individuals who are residents of another state, or firms which maintain their principal officer or place of business in another state, but which have maintained a permanent business in good faith, in an established office, and have been taxpayers in this state for a period of two (2) years, prior to any contract herein contemplated. (Laws 1933, Ch. 50, § 2, p. 52.)"

Section 51-1901, et seq., N.M.S.A., 1941 Comp., pertains to the Contractor's Licensing Law.

Section 6-502, N.M.S.A., 1941 Comp., set out above, is the only definition of "contractor" with reference to contracts awarded by the State. There is nothing in Section 6-502, or in any section found by this office, which prohibits the awarding of public contracts to any persons other than those qualified under the above section.

Section 6-704, N.M.S.A., 1941 Comp., p.s., permits the Purchasing Agent to set up regulations, and if such regulations have been adopted and filed in the Library of the Supreme Court of this State prohibiting the awarding of contracts to anyone other than a licensed general contractor, then we see no reason why such regulations would not be effective; however, no such regulations have been called to the attention of this office, so we must assume that none have been promulgated.

The Purchasing Agent, under the existing law, may award contracts to any person he thinks capable of completing the work under the contract, so long as such person is not in violation of Section 6-502, N.M.S.A., 1941 Comp.

Of course no person in the State of New Mexico may do plumbing work unless he is a licensed plumber, nor contracting work unless he is a licensed contractor, however, the Contracting Law was last amended in 1947 and the Plumbing Law was passed in 1949, thus we believe that the Plumbing Law was extracted from the General Contracting Law, and that while a person prior to 1949 must have had a General Contractor's License to complete water systems, that the Plumbing Law in 1949 superseded, so far as plumbing is concerned, the Contractor's Licensing Law.

If the work is predominantly plumbing work, we see no reason why such work cannot be done by a plumber of this State. The same would be true of work exclusively with the electrical field.

Therefore, it is the opinion of this office that the State Purchasing Agent may award contracts for water systems to any authorized plumber of this State when such work, in his opinion, is predominantly plumbing.

{*304} We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General