

## Opinion No. 57-154

July 4, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,  
Assistant Attorney General

**TO:** The Honorable Lawrence Goodell, Representative, Chaves County, 102 S.  
Missouri, Roswell, New Mexico

### QUESTIONS

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Is it legal for a municipality or a county to enter into a contract with a firm for the installation of Turbin water well pumps, and related items, if that firm does not have a New Mexico contractor's license?

#### CONCLUSION

Yes. Such contract is permissible.

### OPINION

#### ANALYSIS

Section 67-16-3, N.M.S.A., 1953 Compilation, provides as follows:

"A contractor within the meaning of this act, . . . **to construct, alter, repair, add to or improve any building, excavation, or other structure, project, development or improvement, or any part thereof . . .**" (Omitted material unessential to this opinion. Underlining ours.)

Attorney General Opinion 57-105, dated May 16, 1957, in part, reads as follows:

"With reference to the aforequoted section, attention is called to the language underlined whereby is manifest an intent or contemplation of buildings or structures. It has been suggested that the inclusion of the terms "excavation", "project" and "development" might well be considered as referring to all types of earth or ore displacements, and accordingly cover commonly understood mining operations. It is true that the term "excavation" is, in modern day mining methods, used in a technical sense when referring to open pit or strip type of mining. 36 Am. Jur. 281. As used in the hereinabove considered definition, however, the term "excavation" is so placed in the sentence so as to qualify or describe additions to or improvements of structures as suggested."

The above opinion concerned the mining operation of shafting, but we think a water well is equally excluded from the language of Section 67-16-3, N.M.S.A., 1953 Compilation, referring to "excavation."

The installation of turbine well water pumps is an improvement to the water well, not to a "structure" -- nor to an "excavation" under the Statute and previous Opinion on the Statute. As such, we do not think it comes within the purview of the Contractors Licensing Board.

In passing, we would like to point out that this opinion deals with pump installation -- not to a structure which houses it, if any.

As regards the fact that a "municipality or a county" is one of the involved parties, we would like to dispose of that facet of the problem. The original act of 1939 exempted such state sub-divisions from the provisions of the Act; the 1945 amendment eliminated these and certain other exceptions by act of the Legislature. Hence, we believe the intent of the Legislature was to omit political sub-divisions from exceptions to the act, and the fact that one of the contracting parties is a municipality or a county would have no bearing on whether the contractor comes within the jurisdiction of the Contractors Licensing Board.

In closing, we would like to include another Opinion out of of this office, which appears to establish a general policy -- 1939 and 1940, page 93:

"This statute (referring to Article 16) provides rather heavy penalties for its violation, and so it must be strictly construed, no one being included who is not clearly brought within its provisions by the language used."