

## **Opinion No. 57-301**

November 21, 1957

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

**TO:** James A. Price, Chairman, State Labor and Industrial Commission, 216-A Iron  
Ave., S.W., Albuquerque, New Mexico

### **QUESTION**

#### QUESTIONS

1. Does a contract job amounting to \$ 10,000.00 or more have to be contracted?
2. Do the prevailing wage scales for laborers and mechanics apply on job?

#### CONCLUSIONS

1. No.
2. No.

### **OPINION**

#### ANALYSIS

While you refer to a "contract job", a job is not "contract" unless it is contracted. We are informed that the University of New Mexico is doing the job with its own personnel, and that it has not entered upon a contract. Hence, the question should eliminate the word "contract", and our conclusion is based accordingly.

The reasoning that supports this conclusion concerns § 6-6-1:

"From and after the passage and approval of this act, it shall be the duty of every office department, institution, board, commission or other governing body or officer thereof, of this state or any county, municipality, school district or other political subdivisions thereof to award all contracts for the construction of public buildings or structures, or for repair or alteration thereof, to a New Mexico contractor or contractors, whenever practicable."

The title of this Act, in part, reads:

"An act requiring every office, department, institution, . . . to award all contracts for the construction of public buildings . . . to a New Mexico contractor . . . declaring contracts executed in conflict . . . to be null and void . . ."

It is obvious that this statute and title merely provides that such contracts as are let should be let in accordance therewith -- not that all work that is done be contracted for. Hence, our negative answer to question No. 1.

Regarding question No. 2, we refer to § 6-6-6, in part:

"The advertised specifications for every contract in excess of \$ 2,000, to which the state of New Mexico, . . . is a party, for construction, . . . which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages . . ."

The title of this act reads, in part:

"An act relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings and public roads; . . ."

It is equally obvious that this section controls work that is contracted for, and the title refers to the laborers and mechanics employed by those contracting with the "State of New Mexico, or any political subdivision thereof", not the employees of the "State of New Mexico etc.". Hence, our negative conclusion to question No. 2.

Further, the above interpretation is in line with the following sections of the same article. Section 6-6-7 provides as a penalty for failure to pay the minimum wage "termination of the contract". Section 6-6-8 authorizes the State Treasurer to pay laborers and mechanics from accrued payments under such contracts, and authorizes a "black list" of violating contracting firms.