

Opinion No. 59-16

February 24, 1959

BY: FRANK B. ZINN, Attorney General

TO: Contractors' License Board P. O. Box 1179 Santa Fe, New Mexico. Attention: H. B. Wood, Board Manager.

The Contractors' License Board should not issue a contractor's license to a minor.

OPINION

{*23} In a recent opinion request, you ask the following question:

Should the Contractors' License Board issue a contractor's license to an individual who is a minor, being only twenty years of age?

Based upon reasons of sound public policy, I do not believe that a contractor's license should be issued to a minor.

Section 67-16-1, N.M.S.A., 1953 Compilation, provides in part:

"It shall be unlawful for any person . . . to engage in the business or act or offer to act in the capacity or purport to have the capacity of contractor within this state without having a license therefor as herein provided, . . ."

Section 67-16-5 states the qualifications that an individual must possess before obtaining a contractor's license. Under this section no age requirement is stated. Thus, under the Contractor's Licensing Act there would appear to be no reason for requiring that a licensee be of twenty-one years of age or older. Nevertheless, I believe that public policy dictates that minors should not be issued a contractor's license.

Contractors, by the very nature of their work, enter into agreements with the public before providing their services or supplying material in an agreed manner. A minor or infant, as a general rule, may disaffirm or avoid his contracts and agreements. A person dealing with a minor does so at his own peril. 43 C.J.S. page 170, Section 75. If a minor, who had a contractor's license, entered into a contract which was improvident or if he failed to comply with the terms of his agreement, he could simply avoid any responsibility under the contract by disaffirming the agreement.

The Supreme Court of New Mexico has held the Contractors' Licensing Act to be constitutional as a reasonable exercise of the state's police powers, providing that the State Contractors' Licensing Board in exercising this police power is not arbitrary in exercising it. **Kaiser v. Thompson**, 55 N.M. 270, 232 P. 2d 142. The purpose of

legislation pertaining to the licensing of contractors is remedial in nature and for the protection of the public.

It is my view that an infant should not be licensed as a contractor and thus be clothed with the apparent authority to contract when the public if it contracts with the infant does so at its peril. I believe that the refusal of a contractor's license to a minor would be a reasonable exercise of the police power vested in the Contractors' License Board and that such action would best serve the public interest.

Fred M. Calkins, Jr.

Assistant Attorney General