

Opinion No. 59-194

November 23, 1959

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Don L. Coppock State Labor Commissioner Santa Fe, New Mexico

QUESTION

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Is a contract for the demolition of the old state prison one for the "construction, alteration, and/or repair, including painting and decorating, of public buildings or public works or public roads of the State of New Mexico", thus falling within the provisions of § 6-6-6, N.M.S.A., 1953 Compilation?

CONCLUSION

No.

OPINION

{*298} ANALYSIS

You have advised that the Capitol Buildings Improvement Commission desires to contract for the demolition of the old state prison but that it has limited funds available and will be unable to do so if it must comply with the minimum wage requirements under § 6-6-6. In considering the problem with which it was faced, it occurred to the Commission that perhaps a contract of the nature in which it was interested would not fall within the purview of that section for the reason that it was not one for the construction, alteration or repair of a public building. Therefore, this opinion was requested.

The pertinent portion of the section is set forth in the question as shown above. It becomes self-evident that the contract for the demolition of the old prison does not fall within the terms "construction" or "repair". However, {*299} there is some thought that a contract of that nature might be construed as being one for the "alteration" of buildings. It is our opinion, however, that such is not the case.

While I have been unable to find a definition of the word "alter" by the New Mexico Supreme Court, courts of other states have had occasion to frequently define the word. The most common definition used when considering the word in the sense that it is employed in the above mentioned statute is as follows:

"To alter a thing is to change its form or nature, without a destruction of the existence of the thing altered or changed, or a loss of its identity." Haynes v. State, 15 Ohio St. 445, 458; Davenport v. Magoon, 4 P. 299, 301, 13 Or. 3, 57 Am. Rep. 1; Heiple v. Clackamas County, 25 P. 291, 292, 20 Or. 147; City of Hannibal v. Winchell, 54 Mo. 172, 177; Black River Imp. Co. v. Holway, 59 N.W. 126, 128, 87 Wis. 584.

Further,

"An 'alternation' in building is change or variance in form or nature thereof without destroying its identity." Noyes v. Rothfeld, 78 N.Y.S. 2d 433, 436, 191 Misc. 672.

Thus, it is clear that the contract for the demolition of the old penitentiary would not fall within the purview of the word "alteration" and would not fall within the scope of the above referenced statute.

By: Thomas O. Olson

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