

Opinion No. 66-130

December 6, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Mr. David McNeill, Registrar, Contractor's License Board, P. O. Box 580, Santa Fe,
New Mexico

QUESTION

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Does a contractors' license bond provide for the payment of fringe benefits to employees of a licensed contractor who cannot pay such benefits?

CONCLUSION

Yes.

OPINION

{*173} ANALYSIS

Your attention is invited to the 1966 amendment of the bonding section, Section 67-16-21 of the Contractors' License Law, N.M.S.A., 1953 Compilation, (1966 Interim Supplement) which is set forth in applicable part as follows:

E. The bond or agreement of cash collateral assignment shall be for the benefit of:

- (1) any person damaged as a result of a violation by a licensee or applicant of the Contractors' License Law;
- (2) any person damaged as a result of a violation by a licensee of the Uniform Building Code as adopted by the contractors' license board;
- (3) any person damaged by a fraud of a licensee or applicant, which fraud has been established in a court of competent jurisdiction, in the execution or performance of a contract. For the purpose of this subsection, fraud shall include, but not be limited to, the acceptance of payment on a contract without paying to material suppliers a proportionate amount of the payment; and
- (4) **any employee of the licensee damaged by the licensee's failure to pay wages or fringe benefits.** (Emphasis supplied.)

The underscored portion of the statute cited above expressly provides that the contractors' license bond is for the benefit of any employee of a licensed contractor who is damaged by the contractor's failure to pay him wages or fringe benefits.