

Opinion No. 66-72

June 6, 1966

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

TO: Mr. Robert L. Thompson, Engineer, Electrical Administrative Board, 1824 Lomas
Blvd. N.E., Albuquerque, New Mexico

QUESTION

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1. Is an electrical contractor validly licensed by the New Mexico Electrical Administrative Board, also required to possess an additional license issued by the Contractors' Licensing Board, before he may lawfully carry on his Electrical Contracting business?
2. Is he required to be additionally licensed by the Contractors' Licensing Board, before he may lawfully install a pole or structure, which is to be used solely for supporting a sign?
3. May the Contractors' Licensing Board issue licenses to build and install poles or structures required to support electrical signs?
4. In doing the work described in question (3) must the contractor also possess a license issued by the Electrical Administrative Board?

CONCLUSIONS

1. No, unless he does contracting work which is not under the jurisdiction of the Electrical Administrative Board.
2. No.
3. Yes.
4. No.

OPINION

{*89} ANALYSIS

During the past second session of the Twenty-Seventh Legislature an amendment to Section 67-16-3, N.M.S.A., 1953 Compilation was passed. The amended Statute which is currently in force and in effect is part of the Contractors' Licensing Law dealing with

the necessity for securing contractors licenses. The amended portion of the law is set forth as follows:

"C. Any person, firm, copartnership, corporation, association or other organization, or any combination thereof, licensed by the electrical administrative board or the plumbing administrative board as is authorized under the respective laws governing said boards contained in Section 67-19-1 through 67-19-21 and Section 67-22-1 through Section 67-22-24 New Mexico Statutes Annotated, 1953 Compilation, as amended, shall be specifically exempt from the provisions of the "Contractors' License Law" and may enforce any mechanics lien, other legal claim {*90} or remedy in any of the courts, in this state without possessing a license as required under the "Contractors' License Law." However such person, firm, copartnership, corporation, association or other organization, or any combination thereof, shall be required to be licensed by the contractors' license board for the performance of any act other than an act permitted by law under which the person, firm, copartnership, corporation, association or other organization or combination thereof is licensed."

This amendatory act was the legislature's response to a recent New Mexico Supreme Court decision, **Martinez v. Research Park, Inc.**, 410 P.2d 200, 206, originally decided by the New Mexico Supreme Court April 5, 1965, on rehearing December 6, 1965, the second Motion for Rehearing was denied January 17, 1966. In this case the Supreme Court in effect reversed two opinions issued by this office. The Attorney General's Opinions overruled were numbers 58-64 and 60-175. In the former we advised that electrical contracting businesses were to be solely licensed by the Electrical Administrative Board. In the latter the Plumbing Administrative Board was advised that specialty Plumbing Contractors need only have a license as required under the Plumbing Code. The Court, in its substituted opinion on rehearing, held that a licensed New Mexico Electrical Contractor was also required to have a license issued by the Contractors' Licensing Board, before he could lawfully apply to a district court to enforce and foreclose his mechanic's lien. In arriving at this decision the Court interpreted Section 67-16-2 and 67-16-3 of the Contractors' Licensing Law, N.M.S.A., 1953 Compilation as including "Electrical Contractors" under the general category of "Contractors". The Court concluded with the statement that if Electrical Contractors should not be licensed under the Contractors' Licensing Law, then the legislature should enact an appropriate change in the law.

As seen from the amendatory act set forth above the legislature favorably responded. Now both an electrical and plumbing contractor may carry on business and enforce any mechanic's lien or other remedy in any of the courts of this state without possessing a New Mexico Contractor's License, provided, of course, that the contractor in question be properly licensed by the plumbing or electrical board. The legislature in the passage of this amendment solved still another problem which has plagued the respective boards for years. The problem concerns dual licensing in areas where contracting as defined under the Contractors' Law is an incidental part of the work performed by an electrical or plumbing contractor. Up until the present time when such overlapping jurisdiction

occurs, the contractors' board has required such work to be performed with a contractor's license, which brings us to the second question presented in this opinion.

The Contractors' Licensing Board under **K 10** of its rules and regulations filed with the Supreme Court Librarian on September 6, 1965, requires a contractor's license for "sign construction". This additional license has always been required of an Electrical Contractor holding a Class C Electrical Contractor License which specifically "allows the holder to service and install Signs and Outline Lighting". (See page 5 **1966 Electrical Code** issued by Electrical Administrative Board of New Mexico January 1, 1966). This Electrical License classification was validly adopted and is expressly pursuant to the law administered by the Electrical Administrative Board of this state. This law Section 67-19-1 through Section 67-19-21, N.M.S.A., 1953 Compilation applies:

"to all installations of electrical conductors, wiring, conduits, fixtures, devices, appliances or other electrical equipment or materials, hereinafter defined as " **electrical wiring** " within or on public or private buildings, structures, or premises, except as hereinafter provided." Section 67-19-1, supra. (Emphasis added.)

Further, Section 67-19-2, supra, defines an "Electrical Contractor" as one who is engaged in the business of, "installing or repairing electrical {*91*} wiring, conduits, devices, fixtures, equipment, or other electrical materials." Section 67-19-8, supra, requires that electrical contractors be duly licensed by the Electrical Administrative Board.

The Contractors' Licensing Board also has the authority to license the construction required in the installation of an electrical sign. Such authority is found under Section 67-16-2 of the Contractors' Licensing Law which defines a contractor as including one who "constructs, alters, repairs, adds to or improves any building excavation, water well, or other structure, project, development or improvement, or any part thereof." Thus both boards up until the present time under the statutory authority cited above have required an electrical contractor to have two licenses (one with each board) to install a sign.

It is our opinion that this inequitable circumstance has been eliminated by the 1966 amendment to Section 67-16-3 of the Contractors' Licensing Law quoted in the beginning of this opinion. Again, for your examination, we set forth below the portion of the amendment leading us to this conclusion.

"However such person, firm, copartnership, corporation, association or other organization, or any combination thereof, shall be required to be licensed by the contractors' license board for the performance of any act **other than an act permitted by law under which the person, firm, copartnership, corporation, association or other organization** or combination thereof is licensed." (Emphasis added.)

In the application of the above statute to the problem at hand it clearly appears that the Contractors' Licensing Board can only require a contractor's license of an electrical contractor, when he is performing contracting work, which is not included under the

Electrical Administrative Law. Therefore, since the installation of electrical signs is an act permitted by the Electrical Administrative Law, supra, an electrical contractor licensed by the Electrical Administrative Board is no longer required to possess a New Mexico Contractor's License before he may lawfully install electrical signs. This necessarily and obviously covers the entire installation, including the pole or structure required to support the signs. We draw this conclusion because of the plain meaning of the word "install" which means "to set up or fix as a lighting system for use or service; to establish in a place." **Webster's New Collegiate Dictionary.**

However it must also be pointed out that the construction work required to support the sign may also be lawfully undertaken by one holding a license pursuant to Rule **K 10** of the Contractors' Licensing Board. This is so because the 1966 Amendment in question, does not take away any statutory licensing authority of the Contractors' Licensing Board. It only **exempts** a validly licensed electrical contractor from the additional requirement of a contractor's license for work validly performed under the jurisdiction of the Electrical Board.

Thus from the analysis above it is seen that "dual licensing" is no longer required in areas of "dual jurisdiction" existing between the two boards. In areas of work which come under the jurisdiction of both boards only one license is necessary by reason of this 1966 amendment to the Contractors' Licensing Law. This amendment applies to the Plumbing Administrative Board as well. In the future the principles announced in this opinion will apply equally and be used to determine similar "dual licensing" problems existing between the Plumbing Administrative Board and the Contractors' Licensing Board.

Finally we call your attention to the fact that the Electrical Board requires an applicant to pass a specific examination in sign structures and supports before he may receive a license. This, we believe not only shows the Electrical Board is qualified to license this classification, but also is demonstrative evidence that the Board is fulfilling its paramount responsibility, which is to protect and safeguard the citizenry of this state from defective and dangerous electrical wiring and construction.