

Opinion No. 81-11

June 9, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Mr. Leo Griego, Director, State Personnel Office, 120 State Capitol, Santa Fe, New Mexico 87503

PUBLIC OFFICERS AND EMPLOYEES, LICENSES AND LICENSING

All persons employed in journeyman trades or occupations, including those employed by a state agency, are required by law to obtain a certificate of competency in accordance with the provisions of the Construction Industries Licensing Act.

QUESTIONS

Do the certification requirements of the Construction Industries Licensing Act [Sections 60-13-1, **et seq.**, NMSA 1978] for journeyman electricians, plumbers and other journeyman occupations apply to persons employed in such occupations by state agencies?

CONCLUSIONS

Yes.

ANALYSIS

This question has been raised in the context of Opinion of the Attorney General No. 71-55, dated April 16, 1971, in which this office concluded that state agencies were not required to obtain a contractor's license when undertaking public works construction. As that conclusion was based on a determination that the "state" did not fall within the definition of a "person" required to obtain a contractor's license and, in any case, the "state" was not included within the definition of "contractor," Opinion 71-55 has no bearing on the question of whether individual state employees in journeyman occupations are subject to the Construction Industries Licensing Act.

OPINION

Section 60-13-4, NMSA 1978 states that the purpose of the Construction Industries Licensing Act

". . . is to promote the general welfare of the people of New Mexico by providing for the protection of their lives, property and economic well-being against substandard or

hazardous construction, alteration, installation, connection, demolition or repair work, and by providing protection against the fiscal irresponsibility of persons engaged in construction occupations or trades. To effect this purpose, it is the intent of the legislature that:

A. examination, licensing and certification of the occupations and trades within the jurisdiction of the Construction Industries Licensing Act be such as to ensure or encourage the highest quality of performance and to require compliance with approved standards, and be, to the maximum extent possible, uniform in application, procedure and enforcement, . . ."

Accordingly, the Act establishes under the construction industries division of the department of commerce {230} and industry an electrical bureau and a mechanical bureau, Section 60-13-31 NMSA 1978; and provides that "[n]o individual shall engage in the occupation or trade of journeyman unless he holds a certificate of competence issued by either the electrical bureau or the mechanical bureau for the occupation or trade in which he desires to engage," Section 60-13-38(A) NMSA 1978. Applicants for a certificate of competence shall be examined for knowledge of the "orders, rules and regulations governing the occupation or trade for which a certificate is sought" and for "technical knowledge and ability." Section 60-13-38(D). The Construction Industries Licensing Act does not exempt any individual in a journeyman trade or occupation from the certification requirement.

The Personnel Act [Sections 10-9-1, **et seq.**, NMSA 1978] governs state employment. It requires the state personnel board to promulgate rules establishing a classification plan for all state positions and competitive entrance tests to determine qualification, fitness and ability for all non-professional positions. Section 10-9-13 NMSA 1978.

The state may hire only those persons "who meet prescribed minimum requirements and have passed the prescribed tests." Section 10-9-15 NMSA 1978. The Personnel Act does not preclude the state personnel board from prescribing that a certificate of competency, as defined in the Construction Industries Licensing Act, shall be included in the minimum requirements for any state employment in a journeyman trade or occupation.

The State Personnel Act does not exempt state employees in journeyman occupations from obtaining a certificate of competency.

Where a statute plainly provides that **no** individual shall engage in the occupation or trade of journeyman without a certificate of competency, see Section 60-13-38, it must be given effect as written. **State v. Elliott**, 89 N.M. 756, 557 P.2d 1105 (1977). Where the legislature has stated that its intent is to ensure **uniform** application of its requirement of compliance with approved standards, see Section 60-13-4(A), the statutes should be interpreted to mean what the legislature intended and to accomplish the ends sought to be accomplished by it. **State ex rel. Newsome v. Alarid**, 90 N.M. 790, 568 P.2d 1236 (1977).

Therefore, all persons employed in journeyman trades or occupations, including those employed by a state agency, are required by law to obtain a certificate of competency in accordance with the provisions of the Construction Industries Licensing Act.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General