

Opinion No. 39-3297

October 6, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. G. L. Reese, Sr., Assistant District Attorney, Roswell, New Mexico.

{*113} I am in receipt of your letter of October 2nd requesting an opinion on sub-division (f), Section 2, and Section 3 of Chapter 197, Laws of 1939, insofar as it relates to a local merchant in the City of Roswell, which facts you state as follows:

"The party is a local retail merchant, selling electrical goods, heating plants, oil burners, etc. The heating plants and boilers are to be sold installed, and, of course, this requires the furnishing of materials for the insulation, but such jobs will be on contract price for the completed work, but the principal installation will be the sale of oil burners installed in present heating plants. He has been engaged in the sale of oil burners in this city for the past ten years.

The electrical work will consist of wiring oil burners, heating plants, etc. This will be done on contract price, but he expects to hire wiring and plumbing done by an electrician and plumber. He does not manufacture anything in this work, but only uses the items already manufactured for the jobs."

Sub-section (f) of Section 2, Chapter 197, Laws of 1939, reads as follows:

"Retail merchants having a regularly established place of business in the State of New Mexico whose principal business consists in the sale of merchandise other than building materials, but includes furniture, fixtures or furnishings and who incident to the sale of such furniture, fixtures or furnishings perform services in the installation thereof and include the cost of such installation in the sale price."

From the statement in your letter, I am of the opinion that the person to whom you refer complies with the requirements of the exemption in sub-section (f) of Section 2, inasmuch as he is a retail merchant, whose business is also the sale of fixtures, in which category I would name electrical goods, heating plants and boilers, and who incident to the sale of such fixtures performs services in the installation thereof, which would include wiring oil burners, heating plants, etc., by whomever the retail merchants may designate (Section 3 of the Act, which relates to contractors, not conflicting with the above mentioned subsection and in the matter), and including the cost of such installation in the sale price.

Trusting that the foregoing sufficiently answers your question, I am,