

Opinion No. 39-3319

October 25, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. C. E. Hollied, Chairman, State Park Commission, Santa Fe, New Mexico.

{*120} This office acknowledges receipt of your letter of October 23 requesting an opinion as to whether or not you should pay the Painter's Union the sum of \$ 150.00 as rendered by them in a statement to you based upon the claim that convict labor was allowed to paint portions of the greenhouse now being erected on the capitol grounds adjacent to the governor's mansion upon the grounds that they were not given an opportunity to make a bid on this work.

Under Chapter 130, Sections 146 and 152, of the New Mexico Statutes, Annotated 1929 Compilation, the Legislature has authorized prisoners from the penitentiary to work upon and around the capitol buildings and grounds as set out in the following sections:

Chapter 130, Section 146, reads as follows:

" **Prisoners to labor.** All male persons convicted of crime and confined in the penitentiary under the laws of the state, except such as are precluded by the terms of the judgment and sentence under which they may be imprisoned, shall perform labor under such rules and regulations as have been or may hereafter be prescribed by the board of penitentiary commissioners."

Chapter 130, Section 152, reads as follows:

" **Convicts -- How employed.** Whenever the convicts in the penitentiary, or any of them, shall not be employed in any work at the penitentiary, or be otherwise occupied in or about any work or labor in connection with the penitentiary, or in work or labor in or about the capitol building or capitol grounds, it shall be proper and requisite to employ them in the grading, paving and repairing of the streets, alleys, roads and bridges in and about the city of Santa Fe."

Therefore, it is my opinion that the use of convict labor in this matter is authorized by the Legislature. If I understand your letter correctly, the Painters' Union could not make a bid upon this work for the reason that no bids were asked, and naturally it follows that under the circumstances of the building of the greenhouse and the use of convict labor, no bids could be submitted against work authorized to be done by convicts. Therefore, it is my opinion that a statement such as the one rendered by the Painters' Union to you should not be paid as no work was performed by any painters upon the woodwork of the greenhouse except that done by the convicts.

By: GEORGE LOUGEE,

Asst. Atty. Gen.