

Opinion No. 45-4809

October 25, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*147} We are in receipt of your letter of October 23, 1945 and the enclosed proposal made by the engineering firm of Veale and Steen. By this plan the engineering firm would enter into a retainer contract with the various cities, towns and villages in the state; would make a survey of the condition and engineering needs of the various municipalities, and upon call, would perform such services for the towns as became necessary. You ask our opinion as to whether the various municipalities may enter such a contract.

Section 14-1602 of the 1941 Compilation provides in part as follows:

"The mayor shall also designate, subject to the approval of a majority of the city council, or board of aldermen, or board of trustees, as the case may be, the employees of such city, town or village to perform any service which may be authorized by the city council or board of aldermen, or board of trustees, and such approval must first have been had before any officer, or employee appointed by the mayor shall be considered a {*148} duly appointed and qualified officer, or employee of any city, town or village."

By virtue of this provision, if the governing board of the municipality authorizes the performance of engineering services and the mayor appoints the above mentioned firm with the approval of the governing board, it is my opinion that such employment would be lawful.

As a condition precedent, however, provision should be made in the budget of the city. It is further my opinion that since the city may lawfully employ an engineer, that they may lawfully employ a firm of engineers on a retainer basis, since this is merely a form of employment.

No opinion is expressed as to the wisdom of such a contract.

By ROBERT W. WARD,

Asst. Atty. General