

**OPINION  
58-215**

September 26, 1958           (OPINION)

OCCUPATIONS AND PROFESSIONS

RE: Contractors - Licenses - Classifications of

This is in reply to your letter of September 19, 1958, in which you express some concern whether or not your office is properly conforming to the provisions of Chapter 43-07 in the issuing of contractors' licenses. You state that previously licenses were issued in four classifications as provided by section 43-0707 but while such licenses limit the licensee as to the dollar amount which he can bid it does not limit the licensee as to the type of work on which he may bid. Thus, it is possible for a plumbing contractor, for example to bid electrical work, general building construction, streets or highways or any type of construction called for in any public contract. You then ask for an opinion on the following questions:

1. In your opinion, would it be proper and in accordance with the statutes to issue contractors' licenses which are limited as to work classification and based upon the work classifications for which the applicant has the necessary experience and qualifications?
2. In your opinion, is it not the duty of this office to designate minimum standards for each classification of license and issue licenses or renewals thereof only to those who qualify under such standards?

Section 43-0701, under subsection 3, defines a public contractor. The definition contained therein and paraphrased amounts to this, any person who proposes to or enters into a contract with the state of North Dakota or any of its political subdivisions, boards, divisions, departments, municipalities, etc. is considered a public contractor.

Subsection 4 of the same section places a subcontractor in the same category, providing the contract cost or value exceeds one thousand dollars.

These definitions must be kept in mind to determine what is the purpose of Chapter 43-07, relating to contractors' licenses.

The preamble of the Act, as found in Chapter 110 of the 1937 Session Laws which is now Chapter 43-07 of the N.D.R.C. of 1943 states in substance that the purpose of the Act was to provide for the registration of public contractors and to define the term "public contractor" and to provide the requirements and methods of obtaining a license to engage in the business of public contracting in the state of North Dakota and to classify and fix the fee for such license.

Under section 43-0705 we find there are four classes of licenses that

shall be issued and they shall be designated classes A, B, C, and D. This section goes on to say that the holders of such licenses shall be entitled to engage in public contracting business in the state subject to the following limitations. The limitations are set out in dollar value in the contract.

Section 43-0707 then sets forth the fee for every classification of license. It is noted that the license fee is graduated in direct relation to the dollar value of the contract license.

Under Chapter 43-07 the Secretary of State is designated as the registrar and person to carry out the provisions of the Chapter. The general rule of law is that the designated board or officer has no powers or duties other than those that have been granted to him by statute.

Section 43-0704 sets forth the manner in which a license may be obtained and provides that the applicant shall submit on such forms as the registrar shall prescribe an application under oath containing the statement of the applicant's experience and qualifications as a contractor and the value and character of the contract work completed by him during the five years preceding the date of such application and the names of the persons for whom the work was done. This portion of the section seems to set forth the minimum requirements or duties that the registrar must perform before issuing or granting a license. The section goes on to state that the applicant shall give such other information as shall be required by the registrar to assist him in determining the applicant's fitness to act in the capacity of a public contractor. The section also provides that the applicant shall specify the class of license applied for.

While the applicant is required to submit a statement under oath as to his experience and qualifications and the value and character of the work he completed, it does not necessarily follow that his license shall be restricted to the type of work he did before. For example, if the applicant had been engaged in electric work, he is not limited to merely that type of work. The same holds true if he had previously been engaged in plumbing work or some other type of occupation.

It is believed that the statements which the applicant must furnish are merely a way and means by which the registrar may determine whether the applicant is entitled to a class A, B, C, and D license. Construing this section in this light it becomes more significant when it is realized that separate provisions of law control and regulate special occupations, such as electricians and plumbers. Chapter 43-09 provides the system of regulating and licensing persons engaged in electrical work, and Chapter 43-18 provides a similar system as pertaining to plumbers.

Again, referring to section 43-0705 the language "The holders of such licenses shall be entitled to engage in the public contracting business within the state subject to the following limitations:" is impressive, particularly so when we find the limitations as follows: (1) the holder of a class A license has no limitation as to the value of any single public contract project; (2) the holder of a class B license shall not be entitled to engage in the construction of any

single public contract project the value of which is in excess of one hundred twenty-five thousand dollars; (3) a class C license is limited to sixty thousand dollars; and (4) a class D license is limited to fifteen thousand dollars. It would thus appear that the licensee once having obtained a license in any one of the classes enumerated above is entitled to engage in public contracting regardless of the nature of the work involved. However, for work involving plumbing he must, of course, comply with Chapter 43-18. If the work involves electrical work he must comply with Chapter 43-09.

The comments and concern expressed in your letter have merit but nevertheless our opinion must be based solely on the statutory provisions. The duties and powers given to the registrar are only such as we find in the statute. We cannot find any provision in Chapter 43-07 which would direct or authorize the Secretary of State to put a further limitation on a Class B, C, or D license other than what is set forth by statute.

In direct response to your question No. 1, we would be required to answer that by saying that the Secretary of State may issue a license based on the work classification for which the applicant has the necessary experience and qualifications only in respect to the dollar value of the contract but not as to the specific type of work involved.

As to question No. 2, it is the duty of the Secretary of State to designate minimum standards for each classification and to issue licenses only to those who qualify under such standards but only as pertaining to the dollar value of the contract and the individual's qualifications to enter into a contract of either class A, B, C or D but not as to the individual's classification to do either electrical work or plumbing work, construction work or other types of work.

Should you in your experience deem it advisable that occupational limitation be placed upon each class of contract that matter should be brought to the attention of the Legislature and remedial legislation should be enacted to accomplish occupational value restriction.

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