

VOLUME NO. 43

OPINION NO. 67

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Public contractors;  
SCHOOL BOARDS - Requirement for public contractor's license when awarding bids;  
SCHOOL DISTRICTS - Requirement for public contractor's license when awarding bids;  
ADMINISTRATIVE RULES OF MONTANA - Section 8.115.301;  
MONTANA CODE ANNOTATED - Title 37, chapter 71; sections 2-4-102(11), 20-9-204, 37-71-101(3), 37-71-203.

HELD: Title 37, chapter 71, MCA, which requires a person performing public construction work to have a public contractor's license, applies to persons or firms who contract to sell and install carpeting on school district property where the value of the contract exceeds \$5,000.

July 30, 1990

James C. Nelson  
Glacier County Attorney  
P.O. Box 428  
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Dear Mr. Nelson:

You have requested my opinion on the following question:

Is Title 37, chapter 71, MCA, which requires a person performing public construction work to have a public contractor's license, applicable to persons or firms who contract to install wall-to-wall carpeting on school district property where the contract price exceeds \$5,000?

You have informed me that School District No. 15 recently awarded a bid in excess of \$5,000 for the purchase and installation of new carpeting in eight classrooms of a district elementary school. The unsuccessful bidder holds a public contractor's license issued pursuant to Title 37, chapter 71, MCA, and challenged the award on the basis that the successful bidder did not have a public contractor's license. The Montana Department of Commerce construes the applicable law as requiring the bidders to be licensed.

Section 37-71-203, MCA, requires that all bids and proposals for the construction of any public contract project subject to the provisions of Title 37, chapter 71, MCA, contain a statement that the bidder has a public contractor's license. A "public contractor" within the meaning of that chapter includes any person who submits a proposal or enters into a contract to perform public construction work with a public board or agency authorized to award contracts for any public work when the contract price exceeds \$5,000. § 37-71-101(3), MCA. A school board is a public board authorized to enter such contracts on behalf of the school district. § 20-9-204, MCA. Thus, if the sale and installation of carpeting in the elementary school is "public construction work," the bidder is statutorily required to hold a public contractor's license.

Case law from the other states generally excludes installation of carpeting from the definition of construction. See Marston's, Inc. v. Roman Catholic Church of Phoenix, 644 P.2d 244 (Ariz. 1982); Raby v. Westphall Homes, Inc., 414 P.2d 227 (N.M. 1966); Finley-Gordon Carpet Co. v. Bay Shore Homes, Inc., 247 Cal. App. 2d 131, 55 Cal. Rptr. 378 (1966). However, those cases construe narrower, more conventional definitions of "construction." In Marston's, Inc., 644 P.2d 244, the question hinged upon whether or not the product became a permanent part of the structure. In Raby, 414 P.2d 227, and Finley-Gordon, 55 Cal. Rptr. 378, no contractor's license was required to install carpet under statutes excluding anyone who merely furnished materials or supplies without fabricating them into the structure. In contrast, the definition of "public construction work" set forth in section 8.115.301, ARM, a rule promulgated by the Montana Department of Commerce, is very broad. The rule states:

(1) A "public contractor" is anyone who submits a proposal to or enters into a contract with a governmental agency or department for the construction or reconstruction of any public work, the cost of such construction or reconstruction being greater than \$5,000. The term "public contractor" includes subcontractors.

(2) For the purpose of determining the type of work which requires a public contractors [sic] license, the words "public construction work", as referred to in 37-71-101 (3), MCA, are broadly construed to include any work requiring the installation,

addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatever. This rule applies to all contracts exceeding \$5,000 whether or not such contracts require performance of service, maintenance, repair, or any other type of work in addition to or as part of the work as above construed. [Emphasis added.]

§ 8.115.301, ARM. A properly adopted rule implementing a statute has the force of law. § 2-4-102(11), MCA. Assuming the validity of the above-cited rule, "public construction work" includes the installation or replacement of materials of any kind. I therefore conclude that under Montana statutes and rules the sale and installation of carpeting for a cost exceeding \$5,000 is public construction work and the bidder is required to have a public contractor's license.

THEREFORE, IT IS MY OPINION:

Title 37, chapter 71, MCA, which requires a person performing public construction work to have a public contractor's license, applies to persons or firms who contract to sell and install carpeting on school district property where the value of the contract exceeds \$5,000.

Sincerely,

MARC RACICOT  
Attorney General