

## Opinion No. 54-6052

December 7, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Theodore Benninghoven Executive Secretary New Mexico Real Estate Board  
Room 511, Simms Building Albuquerque, New Mexico

{\*524} This will acknowledge receipt of your letter of November 17, 1954, in which you request the opinion of this office upon what constitutes an "active place of business" in the State of New Mexico within the contemplation of subsection (a), Section 13 (§ 51-3223, New Mexico Statutes Annotated, 1941) of the New Mexico Real Estate License Law. That statute permits non-resident real estate brokers to be licensed in New Mexico:

"Provided that such applicant, if a broker, shall have maintained an active place of business in the State by which he is licensed, shall establish and maintain an active place of business in this State, and pass the written examination required by this Act."

Specifically, you state that your investigation has revealed that a number of non-resident real estate brokers licensed in this State have listed, as their "active places of business", residences and business addresses of friends or relatives not in the real estate business.

The New Mexico Supreme Court discussed the definition of the term "place of business" in the case of **R. V. Smith Supply Co. v. Black**, 43 N.M. 177, 88 P. 2n 269, and cited with favor the definition of that term which is set forth in **2 Bouv. Law Dict., Rawle's 3d Rev., p. 2596**, as follows:

"The place where a man usually transacts his affairs or business. "When a man keeps a store, shop, counting-room, or office, independently and distinctly from all other persons, that is deemed his place of business; and when he usually transacts his business at the countinghouse, office, and the like, occupied and used by another, that will also be considered his place of business, if he has no independent place of his own. But when he has no particular right to use a place for such private purpose, as in an insurance office, an exchange-room, a banking-room, a post-office, and the like, where persons generally resort, these will not be considered as the party's place of business, although he may occasionally or transiently transact business there."

It appears then, that the test of whether or not a particular location constitutes a "place of business" is whether or not a person **usually** transacts his business at that location, and has a particular right to use it for such private purpose.

We are of the opinion that when an out-of-state broker lists as his "place of business" a location where he does not transact his business customarily, and which he has no right

to use freely for the transaction of his business affairs, he is not maintaining an "active place of business" in the State of New Mexico, within the meaning of subsection (a) of Section 13.

Trusting that the foregoing will answer your question satisfactorily, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General