

Opinion No. 54-6058

December 17, 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

{*532} On December 7, 1954 this office issued its Opinion No. 6052, in which the term "active place of business", as that term is used in subsection (a), Section 13 (§ 51-3223, N.M.S.A., 1941) of the New Mexico Real Estate Law, was interpreted.

You have requested amplification as to the specific meaning of the word "active" as it is used in the term "active place of business".

As we pointed out in Opinion No. 6052, the New Mexico Supreme Court, in the case of **R. V. Smith Supply Co. v. Black**, 43 N.M. 117, 88 Pac. 2d 269, adopted the following definition of the term "place of business":

"The place where a man usually transacts his affairs or business."

We are of the opinion that activity is implicit in the foregoing definition. To us, the word "usually" denotes continuity of activity.

Thus, with the qualifications stated below, it is our opinion that an "active place of business" must be a location which is the site of the continual transaction of one's affairs or business.

We foresee possible danger, however, in adopting too rigid a construction of the word "active", and wish to express these qualifications:

If a real estate broker maintains an office, and represents to the public that he is ready and willing to transact real estate business at his office, such a broker, in our opinion, should not be deemed to have neglected to maintain an "active place of business" if he should fail to obtain any clients, and therefore fail to transact "continual business" in his office.

Similarly, we see no reason why one should be deemed not to maintain an "active place of business" in this state, within the contemplation of the Real Estate License Law, if he saw fit to close his place of business for a period of time, to permit him to take a vacation, or for any other reason, and thereby ceased, for such period of time, to transact "continual business" in his office.

We do not feel that it was the intention of subsection (a) of Section 13 of the Real Estate License Law that a broker should be required to transact any particular quantity of business at a particular location in order to maintain an "active place of business".

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

By: Henry A. Kiker, Jr.

Assist. Attorney General