

Opinion No. 57-143

June 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

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

QUESTIONS

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Does an individual, partnership, association or corporation, who, for a salary, fee, commission or valuable consideration, sells or offers for sale, real estate for another at public auction to the highest bidder, have to comply with § 67-24-1, N.M.S.A., 1953 Compilation?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 67-24-1 provides that it is illegal for a person to act as a real estate broker or real estate salesman without having first procured a license from the New Mexico Real Estate Board. Section 67-24-2 defines a real estate broker and salesman as follows:

"A real estate broker within the meaning of this act (67-24-1 to 67-24-18) is any person, firm, partnership, copartnership, association or corporation, who for a salary, fee, commission or valuable consideration lists, sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or rents or offers for rent, any real estate for the improvements thereon for others, as a whole or partial vocation. The term 'real estate' as used in this act shall include leaseholds and other interests less than leaseholds.

A real estate salesman within the meaning of this act is any person who for a compensation or valuable consideration is employed either directly or indirectly by a real estate broker, in the pursuance of his business, as a whole or partial vocation."

The third paragraph of this particular section provides for the exemptions from the provisions of the act. This paragraph reads as follows:

"The provisions of this act shall not apply to any person, copartnership, association or corporation, who as owner or lessor shall perform any of the acts aforesaid with reference to property owned or leased by them, or to the regular employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of, or as incident to, the management of such property and the investments therein, nor shall the provisions of this act apply to persons acting as attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing or exchange of real estate, nor shall this act be construed to include in any way the services rendered by an attorney-at-law in the performance of his duties as such attorney-at-law; nor shall it be held to include, while acting as such, a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court, nor to include a trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof."

We do not find in this exemption any mention of any person who would offer for sale real estate at a public auction. In a word, auctioneers, as such, are not exempt from the real estate license act. Following the well recognized statutory construction rules, we would conclude that since auctioneers were not exempt from the licensing act, that it was the intent of the Legislature that such persons would come within the provisions of the act.

We conclude that whenever an auctioneer, for a salary or fee, commission or valuable consideration, offers to sell real estate of another at a public auction to the highest bidder, that such person is engaging in such activities as would require a real estate broker's license.

We do not mean to imply by this that a licensed real estate broker could not hold a public auction for real estate listed with him for sale, and in so holding such public auction such licensed broker could hire an auctioneer to handle the mechanics of auctioning the property itself. However, the real estate broker, or one of his salesman, would have to actually be in charge and work out the details of such sale.