

Opinion No. 63-28

April 1, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Paul R. Brown Executive Secretary Real Estate Commission Albuquerque, New Mexico

QUESTION

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May a licensed real estate broker or salesman representing the seller of real estate give the purchaser of the real estate trading stamps, free down payments on the property, moving costs, free lots, etc. as an inducement to purchase the property?

CONCLUSION

No, but see analysis.

OPINION

{*58} ANALYSIS

New Mexico Statute Annotated 67-24-29 provides that the Real Estate Commission may refuse to license and may suspend or revoke the license of one who is guilty of:

(c) **Paying** or receiving any rebate, profit, compensation or commission from any person other than his principal, (emphasis supplied)

There are many cases which deal with the question of whether the giving of trading stamps upon the making of a purchase is the giving of a rebate or discount or whether it is a bonus or additional compensation used to stimulate trade. We think that the reasoning used in the trading stamps cases is equally applicable to the giving of all of the items which have been named in the question.

Some of the earlier cases held that the giving of trading stamps had the effect of giving the purchaser a rebate or discount. **State v. Lutey Bros.**, 55 Montana 545, 179 Pac. 457, (1919), **Eisenbergs White House, Inc. v. State Bd. of Equalization**, 72 Cal. App 2d 8, 164 P.2d 57 (1946). Some of the more recent and better reasoned cases hold that the giving of trading stamps constitutes something in the nature of a bonus or additional compensation used to stimulate trade. See **State Tax Commission v. Ryan - Evans Drug Store**, 80 Ariz 2d 18, 357 P. 2d 607 (1960).

Section 67 - 24 - 29 (c), supra; however, prohibits a real estate broker or salesman from giving the purchaser either a rebate or something in addition to that which is given to the purchaser by the principal or seller.

It is therefore our opinion that a real estate broker or salesman may be subject to a license revocation for giving to the purchaser of the real estate any of the items enumerated in the question for the purpose of inducing the purchaser to buy the property.

The Statute does not, however, prohibit the owner of the property (principal) from giving to the purchaser of the property any of the items listed in the question.

In summary it is our opinion that the prohibition of Section 67-24-29 (c) is applicable to all of the items enumerated in the question when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of {59} the property as an integral part of a transaction involving the purchase and sale of the property.

By: Joel M. Carson

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