

Opinion No. 65-02

January 15, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Paul Brown, Executive Secretary, New Mexico Real Estate Commission, Room 1018, Simms Building, Albuquerque, New Mexico

QUESTION

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1. Would amendatory legislation providing for blanket bond coverage of real estate licensees be permissible?
2. Would such a blanket bond provision provide better coverage and serve the same purpose as the bond requirement now found in Section 67-24-28, N.M.S.A., 1953 Compilation?

CONCLUSIONS

1. Yes.
2. See analysis.

OPINION

{*4} ANALYSIS

Your first question asks whether a blanket bond requirement (one bond for all licensees) for real estate licensees would be proper if amendatory legislation permitted the same. In view of your question we do not find it necessary to decide if a blanket bond requirement would be permitted under existing statutes. We have already impliedly said that legislation permitting, blanket bonds would be proper for county officials. Attorney General's Opinion 61-33. We see no constitutional limitation on such legislation, and we therefore conclude that a blanket bond would be proper if authorized by statute.

You second question involves a consideration of the provisions of Section 67-24-28, N.M.S.A., 1953 Compilation. In pertinent part that section provides:

"Each real estate broker to be licensed shall first file a bond in the amount of one thousand five hundred dollars (\$ 1,500) executed by a surety company authorized to do business in this state, running to the state, and conditioned upon the faithful performance of the licensee's duties and those of his employees. Anyone who is

damaged by act of the obligor in the bond on account of any violation of this act or of obligor's duty as a real estate broker may maintain an action in his own name on such bond to recover any damage suffered by him including attorney's fees."

It is obvious that the present bond requirement is intended to benefit anyone damaged by the acts of a licensee in failing to comply with his duties. The limit of protection insofar as the bond is concerned, however, is \$ 1,500. It is our conclusion therefore that a blanket bond requirements with more than \$ 1,500 maximum protection for a single transaction would, perhaps, provide better protection to the public than does the present requirement. This conclusion depends upon retention of the statutory language permitting the injured party to maintain an action of the bond.

We note also that the blanket bond would probably provide a ceiling of \$ 100,000 for a single transaction and a total limit of \$ 1,000,000 for all claims under the bond. It is possible, but highly improbable, that this total ceiling for the blanket bond would provide less protection than the present bond requirements. This possibility, of course, depends upon the number of licensees covered under individual bonds existing under present requirements.

We would suggest that the board consider the comparable advantages of individual bonds and the blanket bond with respect to total coverage. Aside from this factor we conclude that a blanket bond similar to the one mentioned should provide at least as good protection to the public as individual bonds.