

## Opinion No. 65-122

July 8, 1965

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

**TO:** Paul R. Brown, Executive Secretary, Real Estate Commission, State of New Mexico, Room 1018, Simms Building, Albuquerque, New Mexico 87101

### QUESTION

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May a person, business firm, or corporation circumvent the requirements of a real estate license by obtaining a power of attorney empowering them to consummate a real estate transaction on behalf of the person they represent.

#### CONCLUSION

No.

### OPINION

#### {\*208} ANALYSIS

Section 67-24-19 New Mexico Statutes Annotated, 1953 Compilation, as amended by Chapter 304, Laws 1965, prohibits any person from acting as a real estate broker or real estate salesman without a license issued by the New Mexico Real Estate Commission. Section 67-24-20 contains several exemptions to this licensing requirement, but one in particular is pertinent to your question. That exemption appears in the following language:

". . . 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 consumation by performance of any contract for the sale, leasing or exchange of real estate. . . ."

The question you have posed {\*209} concerns an attempt by various persons or firms to circumvent the licensing requirements of Section 67-24-10, supra, by obtaining a power of attorney from each and every person they represent on a real estate transaction. From your question it appears that the power of attorney is being acquired in numerous instances merely to circumvent the requirements of the statute. Such a practice is forbidden by Section 67-24-19, supra. In just such a situation, the Louisiana court has held that the power of attorney is of no avail to a person who is using it merely to circumvent the statutory requirements. In speaking about the Louisiana exemption for

persons holding a duly executed power of attorney, the Louisiana court in **Trentman Company v. Brown**, 147 So. 14 (1932), said:

"The person holding a duly executed power of attorney means one 'not otherwise engaged in the business of real estate,' who is acting as the alter ego of an owner in an isolated transaction. It does not mean that one who is engaged in the business of real estate broker may exempt himself from the operation of the act by taking in each instance a power of attorney from the owner whose property he is seeking to sell. If the act meant this, it would soon be worthless as a piece of legislation, for brokers would then in all cases take some formal power of attorney, . . ."

For the same effect, see also **Brouse v. Miers**, 261 S.W.2d 734, (Texas Civil Appeals) reversed on other grounds, 153 Tex. 511, 271 S.W. 2d 419.

It is also quite apparent that a power of attorney, used in isolated transactions where the purpose of the holder of the power is not to circumvent the statutory requirement, can properly come within the statutory exemption. See **Freeman v. Foster**, 121 Pa. S. Ct. 595, 184 A. 469, and **Haytes v. Fulmor**, 66 Cal. App.2d 554, 152 P.2d 746.

In conclusion, therefore, it is our opinion that the statutory exemption contained in Section 67-24-20, supra, applies only to those persons holding the power of attorney and who are not engaged in business as a real estate broker. In the normal isolated transaction, the power of attorney definitely falls within the exemption. If it is being used to circumvent the statute, however, it is of no avail to the person holding it.