

Opinion No. 66-16

February 1, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

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

QUESTION

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Is it a violation of Section 67-24-19 N.M.S.A., 1953 Compilation, for a person, business firm or corporation to advertise the disposition of real estate using the terms "Real Estate Agency", "Realty", "Agency" or "Broker" without first being licensed as a real estate broker as is defined in Section 67-24-20, N.M.S.A., 1953 Compilation?

CONCLUSION

See Analysis.

OPINION

{*20} ANALYSIS

Section 67-24-19, supra, makes it unlawful for any person, business association or corporation to engage in the business, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of or act as a real estate broker or real estate salesman, unless licensed by the New Mexico Real Estate Commission. Section 67-24-20, supra, gives us the definition of a real estate broker and a real estate salesman. This section reads in pertinent part as follows:

"A real estate broker within the meaning of this act is any person, business 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, or auctions or offers to buy, sells or offers to sell, or otherwise deals in options on real estate, or advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning, or dealing with options on any real estate, or the improvement thereon for others, as a whole or partial vocation. . . .

"A real estate salesman within the meaning of this act is any person who for a compensation or valuable consideration is associated with or engaged under contract either directly or indirectly by or on behalf of a licensed broker to participate in any

activity included in the last preceding paragraph or in the pursuance of said broker's business, as a whole or partial vocation."

The language in § 67-24-20, supra, which controls your question is that which reads:

". . . or advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning, or dealing with options on any real estate, or the improvement thereon for others, as a whole or partial vocation. . . ."

Because of the language just quoted, it is not really important whether or not the person, business firm or corporation doing the advertising uses the terms "Real Estate Agency", "Realty", "Agency", or "Broker". The real question is: Have they advertised themselves as offering a service which comes within the definition of a real estate broker and a real estate salesman.

Your question states that the person, business firm or corporation in question is advertising the disposition of real estate, and in this advertising uses the terms enumerated in your question. We are of the opinion that these terms make the advertising a violation of Section 67-27-19 unless the advertiser is licensed as a real estate broker or real estate salesman.