

## **Opinion No. 66-86**

July 1, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

**TO:** Donald A. Martinez, District Attorney, Fourth Judicial District, County Court House, Las Vegas, New Mexico

### **QUESTION**

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1. Is a person who was an employee of an abstract company on January 1, 1963, and as such was actively engaged in compiling matters for the making of abstracts of title on that date exempted from the twenty-year plant provisions of Sections 70-2-8, N.M.S.A., 1953 Compilation (P.S.)?
2. Is there a bonded abstractor in a county within the meaning of Section 70-2-11, N.M.S.A., 1953 Compilation (P.S.) where such abstractor is not open to the public for business?

#### **CONCLUSIONS**

1. No.
2. No, see analysis.

### **OPINION**

#### **{\*113} ANALYSIS**

Until 1963, Section 70-2-1, N.M.S.A., 1953 Compilation provided in pertinent part as follows:

"No person, copartnership, association or corporation shall engage in, carry on or conduct the business of compiling or furnishing abstracts of title to any real estate within this state, without first entering into a bond. . . ."

Section 70-2-4, N.M.S.A., 1953 Compilation provides for a penalty of not less than \$ 100 nor more than \$ 500 for a violation of the act.

In 1963 the legislature enacted the following sections:

"70-2-8. **Requirement of abstract plant.** -- No person shall conduct an abstracter's business unless the person owns, operates or controls an abstract plant consisting of tract indexes and other records, showing in brief comprehensive form, or full copy, all instruments of record or on file, affecting real estate in the county where he is bonded to transact business. The plant shall include an index, by name, covering district court and probate court records, transcripts of judgments, federal and state tax ~~{\*114}~~ liens and other required information for the proper preparation of an abstract. The abstract plant may be maintained in bound books, jackets, folders, on card files or film, or any other form or system, whether manual, mechanical, electronic or otherwise, or in any combination of such forms or systems. The abstract plant shall cover the period from twenty [20] years prior to July 1, 1963, or twenty [20] years prior to the date the abstracter commences business, whichever is later, up to date. The plant must also be currently maintained to include all daily filings in the county affecting real property."

"70-2-9. **Exemption from requirement of abstract plant for certain abstracters.** -- A. Every person who, **on January 1, 1963, was actively engaged in the business of compiling or furnishing abstracts of title** to real estate within any county in this state, shall be exempt from the requirement of having a twenty-year abstract plant in order to conduct an abstracters business in such county, provided that an abstract plant is maintained on a current basis, commencing July 1, 1963.

B. There shall be excluded from the provisions of Section 4 [70-2-8] all persons exclusively engaged in the preparation of abstracts using only the records of the bureau of land management, commissioner of public lands, and/or bureau of Indian affairs." (Emphasis added.)

The constitutionality of the earlier act was upheld in the case of **Gallegos v. Ortiz**, 28 N.M. 598, 216 Pac. 502. That case also held that the object and purpose of the legislation was to make abstracters liable to persons suffering a loss who relied on the abstract compiled and furnished by the abstracter and to provide a means whereby indemnity could be obtained. The bonding and licensing requirement was placed on the abstracter compiling and furnishing the abstract and there was no such requirement as to the employees of such abstracter. They would compile and prepare abstracts under the supervision and directions of the bonded abstracter who would be responsible for having and maintaining the required bond and license.

It is our opinion that an employee of a bonded abstracter on January 1, 1963, who was compiling abstracts for the bonded abstracter and which abstracts were furnished under the name and bond of his employer was not a person actively engaged in the business of compiling or furnishing abstracts within the meaning of Section 70-2-9, N.M.S.A., 1953 Compilation (P.S.), so as to be exempt from the twenty-year plant requirement, even though he might comply with the requirement that he has maintained an abstract plant on a current basis commencing July 1, 1963.

Your second question involves a factual situation where there is a licensed, bonded abstracter within a county, but who for reasons not here pertinent has no office open

and available to the public for business. As a result, and assuming there are no other licensed and bonded abstracters within the particular county, the various lending agencies, real estate brokers, and real estate owners or purchasers are unable to do business since they cannot obtain the necessary and prerequisite abstracts of title.

Section 70-2-11, N.M.S.A., 1953 Compilation (P.S.) reads in part as follows: "Provided that a bonded abstractor may compile and furnish abstracts for any county where there is no bonded abstractor." The sole question now raised is whether there is in the county a "bonded abstractor" within the statutory meaning unless he is open for business to the public and able to compile and furnish abstracts within the county.

All parts of a statute are construed with reference to the whole statute so as to make each part harmonious and consistent with the whole. **State, ex rel Darden v. District Court**, 45 N.M. 119, 112 P. 2d 506. Also, a statute will be construed in the most beneficial way its language will permit to prevent absurdity, hardship or injustice. **Ex parte De Vore**, 18 N.M. 246 136 P. 47. Keeping these rules of {\*115} statutory construction in mind, the interest of the statute is that of protection to the public and not that of creating or maintaining a monopoly or of working a hardship on the public. Construing the portion of the statute above quoted harmoniously and consistently with the intent of the entire statute, it consistently appears that it refers to a bonded abstractor who is furnishing service to the public and is not referring to a person who qualifies as an abstractor, but who is not in fact open for business and serving the public. It would be unjust and would create hardship to interpret the quoted portion as prohibiting a **bonded** abstractor normally operating in some county in the State from serving the public in another county where there is no **available** bonded abstractor. Such a construction is to be avoided, if possible, and there is no compelling necessity for such harsh construction.