

Opinion No. 75-72

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BY: OPINION OF TONEY ANAYA, Attorney General

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QUESTIONS

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Under the Mobile Housing Act, Section 67-41-1, **et seq.**, NMSA, 1953 Comp. (1975 Interim Supp.), what is the extent of the Mobile Housing Commission's authority over mobile housing park owners and operators?

CONCLUSION

See analysis.

OPINION

{*189} ANALYSIS

First, the question of licensure by the Commission should be considered. There appears to be some conflict within the act concerning the licensing of park owners or operators solely on the basis of their status.

As defined in the Mobile Housing Act, Section 67-41-2(J), **supra**, a "park owner or park operator" is:

"Any person engaged in the business of renting, leasing or providing, for any form of compensation, a mobile housing unit for occupancy on property not owned by the mobile housing unit's occupant, or providing {*190} space and facilities for a mobile housing unit owned by the occupant; * * *."

Section 67-41-4(E), **supra**, states that:

"The commission shall consist of:

* * *

(4) One [1] member who is, or who is the qualifying party of, a mobile housing park owner of operator licensed under the Mobile Housing Act; * * *"

This language indicates that mobile housing park owners or operators are to be licensed. The language of Section 67-41-5, **supra**, would also tend to support this position. The relevant provision reads:

"* * * If the manufacturer, dealer, installer or park owner or operator is in violation of the act or of the rules and regulations promulgated thereunder, the board may order him to comply, or may suspend his license until such time as the licensee complies with the order of the board, or it may revoke his license."

This section seems to indicate that, since the Commission may suspend the license, a park owner or operator must have been previously licensed by the Commission. Nevertheless, the language of other pertinent sections of the act point emphatically to another conclusion.

Section 67-41-8, **supra**, states that:

"A. No person shall engage in business as a mobile housing unit manufacturer, dealer, repairman, installer or salesman unless licensed as provided in the Mobile Housing Act [67-41-1 to 67-41-15].

"B. The commission shall adopt regulations creating a system of license classifications covering the occupations of mobile housing unit dealer, mobile housing unit manufacturer, mobile housing unit repairman, mobile housing unit installer and mobile housing unit salesman, and providing for the qualifications and examination for each class of license."

No mention whatsoever is made of licenses for the mobile housing park owners or operators; they are completely excluded from this section. The Commission has no authority to adopt regulations creating a system of license classification, qualification or examinations for park owners or operators as it does for other occupations.

The language of two other sections of the act should also be given some attention. Section 67-41-9, **supra**, refers to the application and issuance of licenses as prescribed in Section 67-41-8, **supra**, which is quoted above, and it likewise contains no mention of park owners or operators. Finally, Section 67-41-11, **supra**, speaks of the maximum amounts the Commission can charge for annual license fees for manufacturers, dealers, repairmen and installers. Again, there is no reference to park owners or operators.

The problem in this situation is determining the legislative intent in view of the apparent ambiguity or conflict. It is the general rule in New Mexico that, in determining legislative intent, statutes are to be given effect as they are written; only where there is an ambiguity and the meaning is unclear may resort be had to construction or interpretation. **Keller {*191} v. City of Albuquerque**, 85 N.M. 134, 509 P.2d 1329 (1973). More specifically, for purposes of this opinion.

"* * * In the construction of a statute, in order to determine the true intention of the Legislature the particular clauses and phrases should not be studied as detached and isolated expressions, * * *

"* * * It is an elementary rule of construction of statutes that all parts of an act relating to the same subject should be considered together, and not each by itself. (Citation omitted.)" **State v. District Court of Second Judicial District**, 45 N.M. 119, 122, 112 P.2d 506, 508 (1941).

In construing statutes, the legislative intent must be determined from consideration of the entire act involved. Construction should result in a reconciliation of various conflicting provisions so as to render them as consistent, harmonious and feasible as possible. The ultimate legislative intent as deduced from the whole of the act must prevail over that of a particular part or parts considered separately. **El Paso Electric Co. v. Milkman**, 66 N.M. 335, 347 P.2d 1002 (1959).

With due regard for these principles of statutory construction, and after a careful analysis of the statute involved, it is our opinion that mobile housing park owners or operators as such are not subject to licensure by the Mobile Housing Commission. Should a park owner or operator engage, however, in business as a manufacturer, dealer, repairman, installer or salesman, he must be licensed in accordance with Section 67-41-8, **supra**, and pertinent regulations.

Thus, the other sections referring to licensed park owners or operators, such as Section 67-41-5, **supra**, should be interpreted to mean licensed in one of the other specified occupations. Generally speaking, the purpose of the Mobile Housing Act is to protect the ultimate consumer by controlling the construction, repair, modification, installation, tie-down, hook-up and sale of all mobile housing units within the State of New Mexico. According to Section 67-41-6(E), **supra**, the Commission shall adopt rules and regulations pertaining to these particular matters. Although a park owner or operator must, of course, conduct his operation in harmony with statutory provisions and whatever applicable rules and regulation the Commission promulgates, the Mobile Housing Act does not provide the Commission with authority to regulate the general operation of mobile housing parks.

There are, however, two other provisions of the act which refer specifically to park owners and operators. Section 67-41-7, **supra**, states that they may be required to furnish and maintain with the Commission a consumer protection bond as indemnity for losses sustained by consumers as a result of violation of the statutes or regulations, fraud or misrepresentation. Also, according to Section 67-41-15, **supra**, the Commission is authorized to receive complaints from consumers against park owners or operators and to adjust these complaints to the reasonable satisfaction of the consumer, by means of a formal hearing if necessary, pursuant to the Uniform Licensing Act, Sections 67-26-1, **et seq.**, NMSA, 1953 Comp. The Commission has the authority to investigate and adjudicate complaints, and it apparently may order that

damages, if any, be paid from the bond posted by the {*192} park owner or operator, or it may suspend or revoke any licenses that the park owner or operator may possess.

By: Nicholas R. Gentry

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