

Opinion No. 80-22

June 4, 1980

OPINION OF: Jeff Bingaman, Attorney General

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TO: Robert P. Harrelson, Executive Secretary, New Mexico Real Estate Commission, Suite 608, 600 Second, N.W., Albuquerque, New Mexico 87102

BOARDS, COMMISSIONS, COUNCILS

A person may hold more than one real estate broker's license at the same time, and the part-time broker provisions of Rule 3 of the New Mexico Real Estate Commission's rules and regulations are legally correct.

QUESTIONS

1. May a person hold more than one real estate broker's license at the same time?
2. Are the part-time broker provisions of Rule 3 of the New Mexico Real Estate Commission's rules and regulations legally correct?

CONCLUSIONS

1. Yes.
2. Yes.

ANALYSIS

Attorney General Opinion No. 58-62 concluded that a person may hold more than one broker's license at the same time: one as an individual; the other as a qualifying party for a business association. The statute being interpreted there was substantially the same as the current Section 61-29-9(D), NMSA 1978. We do not have any reason to reject that opinion, and in fact, we reaffirm its conclusions as far as it goes. The statute expressly authorizes a broker to hold more than one license provided that person is actively engaged in the real estate business of the partnership, corporation or other business association for which he is the qualifying party.

OPINION

The key word limiting the number of licenses one person can hold is "actively". The qualifying broker must be actively engaged in the business. Permitting a broker playing a nominal role to be so licensed would be contrary to the letter and spirit of the statute.

Thus, common sense would dictate a practical limit to the number of entities for which one individual could be the qualifying broker.

The statute **does not** authorize an individual to have more than one license in an individual capacity. Business forms created by statute have a legal existence separate from that of the individual members or shareholders. An individual conducting business as proprietor cannot create a distinction between himself and the business; they are legally indivisible. In this regard, the trade name a person adopts for his business is of no consequence.

Your second question addresses the problem of part-time brokers who {^{*155}} employ salespeople. You essentially ask if the New Mexico Real Estate Commission's Rule 3 is legally correct. The rule provides in part:

"A duly licensed broker whose principal business is other than that of a real estate broker shall not be allowed or permitted to employ a real estate salesperson or salespersons, and no license shall be issued to any salesperson for or purporting to work for any such licensed broker if:

(1) Said principal business is an activity not closely related to or associated with real estate, and

(2) Said principal business requires the broker to be away from his licensed place of business."

Subsections A and B of Section 61-29-2, NMSA 1978, and subsections D and E of Section 61-29-11, NMSA 1978 express a clear legislative mandate that brokers -- the persons principally responsible to the public -- actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time.

An administrative rule must express the Legislature's intent without exceeding the authority delegated to the issuing agency. The Commission, as an administrative agency of this state, has only such powers as are delegated to it by the Legislature.

Public Service Company of New Mexico v. New Mexico Environmental Improvement Board, 89 N.M. 223, 549 P.2d 638 (Ct. App. 1976).

The Commission has the authority to issue rules which interpret and apply the statutory requirements established by the Legislature. As written, and if reasonably applied, Rule 3 properly does that in the case of part-time brokers.

ATTORNEY GENERAL

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