

Opinion No. 47-5070

August 25, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Lynell G. Skarda, District Attorney, 9th Judicial District, Clovis, New Mexico.

{*81} We wish to acknowledge receipt of your inquiry of August 21, 1947 pertaining to whether or not the hereinafter factual situation is unlawful, in view of Section 31 (a) 7 of Chapter 71, Laws of 1947.

I herewith take the liberty of quoting from your letter as follows:

"On August 17, 1945, Mrs. Una M. Steed sold to L. B. Sparks, E. M. Blackburn, Jr., and P. D. Blackburn by warranty deed and by bill of sale all the real and personal property of the Steed Funeral Home in Clovis. The bill of sale provides that the purchasers shall have exclusive use of the name, Steed Funeral Home, in the further operation of said business in {*82} Clovis. At the present time it is believed that Mrs. Steed has no right, title, or interest in the Steed Funeral Home whatsoever, but this business continues to be operated using the name Steed Funeral Home with L. V. Sparks advertising as co-owner and manager. Mr. Sparks' interest is approximately one-third. The two Blackburn parties are residents of Amarillo, Texas, and have large interests and establishments of this nature throughout West Texas. In view of the fact that Mrs. Steed no longer has an interest in the business and in view of the fact that the Steed Funeral Home now advertises, "Serving Clovis Since Clovis Began," the question has arisen as to whether or not the use of the name Steed Funeral Home constitutes as an advertisement under a name which tends to mislead the public within the purview of the above cited statute."

Undoubtedly, at the time of this sale, consideration was paid for the privilege of using the name "Steed Funeral Home." As far as I have been able to find, there is nothing to prevent a party from selling business good-will and use of a firm name when he disposes of his business.

It is our opinion that such does not constitute a violation of Section 31 (a) 7 of Chapter 71, Laws of 1947, as we cannot see how such advertising would mislead the public to its detriment.

Trusting the aforementioned satisfies your inquiry, I am

By: ROBERT V. WOLLARD

Asst. Atty. General