

## Opinion No. 52-5477

January 24, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Richard R. Spurrier Secretary Oil Conservation Commission Santa Fe, New Mexico

{\*193} This is in reply to your inquiry of September 14, 1951, in which you ask the opinion of this office as to whether the land men or brokers in the employ of oil companies are within the purview of the Real Estate Dealer's licensing law, which is § 51-3211 through 51-3228, New Mexico Statutes Annotated.

§ 51-3212 states:

"A real estate broker within the meaning of this act is a firm, partnership, co-partnership, 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 any real estate or the improvements thereon to others as a whole or partial vocation, the term 'real estate' as used in this act shall include leaseholds and other interests less than leaseholds. \* \* \* \*"

The question presented is whether the land men of the oil companies come within the definition just quoted. There are a number of exceptions to the application of this act and we must first examine those before trying to answer the question of whether or not those land men are real estate brokers. In the same section, 51-3212, it states:

"The provisions of this act shall not apply to any person, copartnership, association or corporation, who as owner or lessor performs any of the acts aforesaid with reference to property owned or leased by them, or to the regular employees thereof, with respect to the property so owned or leased where such acts are performed in the regular course of or as incident to the management of such property in the investments therein."

In my opinion the applicability of the real estate dealers' licensing law is entirely dependent upon the nature of the operation of the oil company and of the services performed for that oil company by their land men. If, for example, a major oil company employed a number of men in the field, whose task it was to purchase leases for the company with a view to eventual testing, exploration and possible drilling, and to sell leases not deemed advisable to retain, then they must be deemed to be acting within the terms of the exceptions quoted. The land men in this instance would not be brokers but would be the 'regular employees' of an individual lessee or owner. Their work would then not be the buying or selling generally of real estate for 'others' but would be acting solely in the interests of their employer, the oil company.

On the other hand, should you have a broker or land man who operates in the field for himself, with his principal sales and purchases being made for and to the oil companies, in my opinion, such an operation would constitute him a {<sup>\*</sup>194} real estate broker within the meaning of the act.

The differentiation being that the employee of the oil company operating for them alone is not in business as a real estate broker buying and selling generally for others but is the exclusive agent of his employer whether buying or selling for the company; while the general broker or oil and gas lease operator may be at the same time the agent for many different concerns, firms or individuals.

The basic purpose of this law is to regulate and control for the benefit of the general public the operation of real estate dealers. The purpose of the regulation is to provide some method of screening the men who come into the business, controlling them after they are in the business through the requirement of licensing and the filing of bonds with the State and requiring that they comply with certain minimum operational standards set up by the Board and the language of the statute. Where the statute speaks of buying and selling for 'others', the 'others' are the general public whom the statute is designed to protect.

It is for this reason that, in my opinion, the land man operating for one company and being their agent solely is exempt from the purview of the act.

I trust that this will answer your inquiry fully.