

## Opinion No. 53-5745

April 27, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Dick Spurrier, Chairman Oil Conservation Commission Santa Fe, New Mexico

{\*147} We are in receipt of a request for an opinion concerning whether or not oil and gas lease brokers are subject to the provisions of § 51-3211, N.M.S.A., 1941 Comp., et seq., as amended.

Section 51-3212 reads as follows:

"51-3212. Definitions and exceptions. -- A real estate broker within the meaning of this act (§§ 51-3211 - 51-3228) is any person, firm, partnership, copartnership, 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 for 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.

A real estate salesman within the meaning of this act is any person who for a compensation or valuable consideration is employed either directly or indirectly by a real estate broker, in the pursuance of his business, as a whole or partial vocation.

The provisions of this act shall not apply to any person, copartnership, association or corporation, who as owner or lessor shall perform 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 and the investments therein, nor shall the provisions of this act apply to persons acting as attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, leasing or exchange of real estate, nor shall this act be construed to include in any way the services rendered by an attorney-at-law in the performance of his duties as such attorney-at-law; nor shall it be held to include, while acting as such, a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court, nor to include a trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof."

I assume that your question is directed to the normal and usual oil and gas lease broker, and not one in a confidential relationship of attorney and client or operating under a power of attorney.

There is nothing in this statute which indicates an intention to exclude brokers of oil and gas leases. You will note the last sentence of the first paragraph of the section set out above states the term **real estate**, as used in this act, shall include leaseholds and other interests less than leaseholds. This statement is in accord with the settled law in New Mexico. The Supreme Court has on many occasions defined an oil and gas lease as an interest in land. The statute and the sections of the real estate licensing laws include, specifically, all persons dealing in real estate with the express exception of those persons set out in the third paragraph of the section set out {*\*148*} above.

Therefore, it is the opinion of this office that oil and gas lease brokers, unless they are included in the persons specifically designated in the third paragraph of § 51-3212, N.M.S.A., 1941 Comp., are included in the provisions of this act and must become licensed as real estate brokers, as provided in § 51-3211 et seq.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General