Opinion No. 57-288

November 7, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker, Assistant Attorney General

TO: Mr. George A. Kenyon, Executive Secretary, New Mexico Real Estate Board, 511 Simms Building, Albuquerque, New Mexico

QUESTION

QUESTION

Under the rules and regulations adopted by the New Mexico Real Estate Board pursuant to the New Mexico Real Estate Dealers Act, is it sufficient for an association, partnership or corporation engaged in dealing in real estate to file a single bond with respect to such association, partnership, or corporation; or does the law require an individual bond for each individual who serves as a real estate broker?

CONCLUSION

A surety bond is required for each individual.

OPINION

ANALYSIS

You state that the above question arises by reason of the provision of paragraph 6 (b) of the rules and regulations of the New Mexico Real Estate Board, adopted and amended May 7, 1953, which reads as follows:

"In the case of a partner or officer leaving the firm in whose name a license to act as a real estate broker shall have been issued, and if such partner or officer shall be a licensed broker in this state, such partner or officer shall be permitted a maximum of thirty days after leaving such partnership, association, or corporation in which to file an individual bond in order to maintain his license as a broker, and the failure by any partner or officer to file the required bond within the time permitted shall be deemed by the Board to be a refusal by such partner or officers to maintain his status as a licensed broker in this state."

The answer to your inquiry depends upon the nature and effect of the regulation of real estate dealers which is provided for by Laws of 1951, Chapter 224, compiled as Section 67-24-1 through 67-24-18, N.M.S.A., 1953. As indicated by the New Mexico Supreme Court in State vs. Spears, 57 N.M. 400, 259 P. 2d 356 (1953), the purpose of this legislation is the regulation of the business of real estate brokers and dealers, in the

exercise of the state's police powers, because of the intimate connection of that business with the public welfare.

Accordingly, the statute makes it unlawful for any person, copartnership, association or corporation to act as a real estate broker or real estate salesman without a license (§ 67-24-1, N.M.S.A., 1953 Compilation); and the statute prescribes penalties for any person or corporation violating the Act (§ 67-24-16, N.M.S.A., 1953 Compilation). The penalties provided apply to individuals and also to corporations. The explanation for the absence of a provision rendering penalties applicable to copartnerships is well set forth by the Opinion of the New Mexico Supreme Court in the case above cited, 57 N.M. 400, at pages 411-412.

While the scheme of regulation clearly shows the legislative intent that a license shall be required of any individual or organization engaging in a business of dealing in real estate, it is equally clear that the entire procedure for licensing, from the filing of the application through the revocation of a license, is constructed from the point of view of the qualifications of the individual doing business as a real estate dealer, whether individually or by means of some business organization, with particular reference to his trustworthiness and competency. In accordance with this legislative intent, the statute specifically provides, in Section 67-24-8, N.M.S.A., 1953 Compilation, as follows:

"Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interests of the public and only after satisfactory proof has been presented to the board. Every applicant for a license as a real estate broker shall be of the age of twenty-one (21) years or over, and a citizen of the United States. Broker's licenses may be issued to partnerships, associations or corporations, Provided at least one member or officer or employee thereof meets all requirements of this act for an individual broker, and **Provided further that all members, officers or employees, who actively engage in the real estate business first secure a broker's license or salesman's license."** (Emphasis supplied.)

This understanding of the statute is further borne out by the explicit provision in Section 67-24-11, N.M.S.A., 1953 Compilation, relating to revocation of licenses and refusal of licenses, as follows:

"Any unlawful act or violation of any of the provisions of this act by any real estate salesman, employee or partner or associate of a licensed real estate broker, shall not be cause for the revocation of a license of any real estate broker, unless it shall appear to the satisfaction of the board that said real estate broker had guilty knowledge thereof."

Accordingly, it is the conclusion of this office that the language of Section 67-24-10, N.M.S.A., 1953 Compilation, reading as follows:

"The board shall issue to each applicant qualified under the terms of this act, a license in such form and size as shall be prescribed by the board; Provided, that real estate brokers shall first file a bond in the amount of fifteen hundred dollars ($ 1,500) executed by a surety company authorized to do business in this state, running to the state, and conditioned upon the faithful performance of the licensee's duties and those of his employees. . ."

does not contemplate that a single surety bond in the amount of $ 1,500 would suffice in the case of a partnership, association or a corporation dealing in real estate, to cover all real estate brokers associated with such business organization. To the contrary, the practice of the New Mexico Real Estate Board, in construing the law to require an individual bond for each real estate broker associated with an association, partnership or corporation engaged in dealing with real estate, is entirely proper, and nothing contained in Paragraph 6 (b) of the Board's rules and regulations should be considered as giving rise to any lawful or proper implication to the contrary.