

Opinion No. 81-06

April 20, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Senator Joseph H. Mercer, 3127 Carolina, N.E., Albuquerque, New Mexico 87110

PROPERTY LAW

Section 45-2-112 NMSA 1978, which was enacted subsequent to the 1921 amendment to Article II, Section 22, operates to suspend the prohibition against ownership of real property in New Mexico by persons other than United States citizens.

QUESTIONS

May persons who are not citizens of the United States acquire title, leasehold or other interest in or to real estate in New Mexico?

CONCLUSIONS

Yes.

ANALYSIS

The New Mexico Constitution adopted in 1911 provided at Article II, Section 22, that

"No distinction shall ever be made by law between resident aliens and citizens in regard to the ownership or descent of property."

In 1921, Article II, Section 22, was amended to provide that

"Until otherwise provided by law no alien, ineligible to citizenship under the laws of the United States, or corporation, copartnership or association, a majority of the stock or interest in which is owned or held by such aliens, shall acquire title, leasehold or other interest in or to real estate in New Mexico."

OPINION

Although there existed at the time of the 1921 amendment, a New Mexico statute enacted by Laws 1871-72, Chapter 5, Section 1, authorizing persons who were not citizens of the United States to hold real property in New Mexico, this office concluded in Opinion of the attorney General 1929-30, p. 11, dated June 25, 1930, that legislation

enacted prior to the 1921 amendment could not exempt aliens from the prohibitions of Article II, Section 22.

As a rule, constitutional provisions apply prospectively unless a retroactive operation is clearly indicated. **State v. Sunset Ditch**, 48 N.M. 17, 145 P.2d 219 (1944). The 1921 amendment to Article II, Section 22, prohibited ownership of any interest in real property in New Mexico by aliens **until** such a privilege was granted by subsequent legislation.

In 1975, the 1871-72 statute [being Section 70-1-24 NMSA 1953] was repealed by Laws 1975, Chapter 257, Section 9-101 and re-enacted by Laws 1975, Chapter 257, Section 2-112 as Section 32A-2-112 NMSA 1953. The 1975 law, now codified as Section 45-2-112 NMSA 1978, provides that:

"Aliens shall have full power and authority to acquire or hold real estate by deed, will, inheritance or otherwise, when the same may be {**216*} acquired in good faith and in due form of law, and also to alienate, sell, assign and transfer the same to their heirs or other persons, whether such heirs or other persons are, or are not, citizens of the United States. When an alien having title or interest in any lands or estate dies, such lands or estate shall descend and vest in the same manner as if such alien were a citizen of the United States, and such circumstance shall not be an impediment to any person holding an interest in said estate, although not a citizen of the United States, for all said persons shall have the same rights and resources and shall, in all respects, be treated on the same footing as native citizens of the United States with respect to the personal estate of an alien dying intestate, and all persons interested in said estate, under the laws of the state, whether aliens or not."

Because Section 45-2-112 was enacted subsequent to the 1921 amendment to Article II, Section 22, it operates to suspend the prohibition against ownership of real property in New Mexico by persons other than United States citizens.

ATTORNEY GENERAL

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