

REAL ESTATE - Licensing of corporations operating computer referral services to real estate brokers. Sections 66-1924 and 66-1925, R.C.M. 1947.

- HELD:**
- 1. Corporations operating a computer referral service for the purpose of promoting the sale, lease or disposition of real estate within Montana must comply with the licensing requirements of the Montana Real Estate License Act in order to conduct operations in Montana.**
 - 2. A corporation operating computer referral services to real estate brokers may conduct its business in Montana only if all corporation officers involved in the actual operation are licensed as real estate brokers.**

October 21, 1971

Mr. George Lackman, Chairman
Montana Real Estate Commission
504 North Lamborn
Helena, Montana 59601

Dear Mr. Lackman:

You have requested my opinion as to whether a person who performs a referral service on real estate listings is required to be licensed as a real estate broker and whether a corporation may perform a referral function on real estate listings.

You state that a corporation solicits the membership of licensed brokers, and is compensated for furnishing real estate listings by a membership and use fee paid by the brokers. The corporation supplies the member broker with forms upon which the broker lists information relative to particular real estate which is subsequently filed in a computer bank. Information concerning a particular listing is then provided to another member broker upon request.

Section 66-1924, Revised Codes of Montana, 1947, provides in part:

“(I)t shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker . . . within this state without first having procured a license as such broker. . . .”

Section 66-1925 (b), R.C.M. 1947, defines the term broker and states in part:

“(I)t also includes any individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both.”

It should be noted that although subsection (b) of section 66-1925, supra, utilizes the term “individual” in its definition of broker, subsection (d) of section 66-1925, supra, provides:

“(d) The term ‘person’ shall mean and include individuals, partnerships, associations and corporations, foreign and domestic, except that when referring to a person licensed under this act it shall mean an individual.”

This indicates that the terms may be used interchangeably.

In this particular instance, it appears that the corporation in question is charging an advance fee for purposes of membership and also contracting for the collection of a use fee which must be paid each time information is transmitted or received. Since the corporation provides a computerized information and referral service to member brokers through the operation of a computer bank, it is apparently the organizational purpose of the corporation to promote the sale, lease or disposition of real estate within this state. The question then becomes whether the promotion is through “listing in a publication issued primarily for such purpose or for referral of information concerning such real estate to brokers, or both.” Although the corporation in question does not engage in either the preparation or distribution of a publication, it does provide a referral service for such information by the distribution of computerized data to member brokers, and would appear to come within the scope of the second clause of the above-quoted provision, “for referral of information concerning such real estate to brokers”. The question then becomes whether the “referral of information” clause refers to a person who “undertakes primarily to promote” through “listing in a publication”.

The term “publication” has been defined as:

“To make public; to make known to people in general; to bring before public; to exhibit, display, disclose or reveal. (Citations omitted)” **Black’s Law Dictionary** (Rev. Fourth Ed.) p. 1396

Utilizing the foregoing definition, it appears that the clause "through its listing in a publication issued primarily for such purpose" refers to the listing of real estate information in a periodical, brochure, pamphlet, etc., distribution of which is available to the general public. However, the subsequent clause "or for referral of information concerning such real estate to brokers", by utilization of the words "referral to brokers", implies limited, non-public distribution of the information; that is, only to brokers and not to the general public.

It would appear, then, that subsection (b) of section 66-1925 providing "through its listings in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both", refers to two distinct situations. The use of the word "both" at the end of the provision serves to substantiate this proposition.

Although the language contained in subsection (b) of section 66-1925 is somewhat ambiguous, it must be remembered that the intent of the legislature in enacting such provision is the controlling consideration.

The Montana Supreme Court recognized this fact as early as 1938 in the case of *State ex rel. Williams v. Kamp*, 106 Mont. 444, 446, 78 P.2d 585, wherein the court stated:

"In construing a statute, the intention of the legislature is the controlling consideration, and to ascertain the reason and meaning of particular provisions of doubtful meaning, courts may resort to the history of the times and cause or necessity influencing the passage of the Act." (citing authority)

Again, in *Doull v. Wohlschlager*, 141 Mont. 354, 364, 377 P.2d 759 (1963), the court, in addressing itself to the same consideration, stated:

"A statute will not be interpreted to defeat its evident object or purpose . . . The objects sought to be achieved by legislation are of prime consideration to interpretation of such legislation." (Citations omitted)

The object sought to be achieved by the Montana legislature in enacting subsection (b) of section 66-1925, R.C.M. 1947, was to regulate, by licensing, those operations which charge an advance fee and/or collect a fee in connection with a contract negotiated primarily for the purposes of promoting the sale, lease or disposition of real estate within this state, whether it be done by listing such information in a publication or by the referral of information to brokers, or both.

In your second question you indicate that subsection (b) of section 66-1925 provides in pertinent part:

“Corporations . . . shall not be licensed under this act, (that is, licensed as real estate brokers), but nothing in this act shall prevent a corporation . . . from acting as a real estate broker provided that every corporation officer . . . actually negotiating or attempting to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate . . . shall be licensed as a broker.”

Under the terms of the above-cited statute, a corporation per se may not be licensed as a real estate broker. A corporation may conduct its operations in Montana only if all corporation officers involved in the actual operation of the corporation obtain licenses as real estate brokers pursuant to the provisions of chapter 19, Title 66, R.C.M. 1947.

THEREFORE, IT IS MY OPINION that:

1. A corporation that charges by contract an advance fee and a use fee, primarily for the purpose of promoting the sale, lease or other disposition of real estate within the state by referral of information concerning such real estate to brokers, must comply with the licensing requirements of the Real Estate License Act in order to conduct its operations in Montana.
2. All corporation officers involved in the actual operation of a corporation engaged in the sale or exchange of real estate in the state of Montana must be licensed as real estate brokers if the corporation is to conduct operations in Montana.

Very truly yours,

ROBERT L. WOODAHL
Attorney General