VOLUME NO. 34   Opinion No. 26

REAL ESTATE - Salesman's License; six-month waiting period following second consecutive examination failure. Section 66-1930, R.C.M. 1947.

HELD: An applicant who has failed the real estate salesman's examination twice in succession must wait six months before being eligible to again take the examination, even though other examinations were offered between the applicant's first and second failures.

                                              November 17, 1971

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

Dear Mr. Lackman:

    The Montana Real Estate Commission has requested my opinion as to whether an applicant who has failed the real estate salesman's examination twice in succession is required to wait six months before being eligible to again take the examination if two other salesman's examinations were offered during the time between the applicant's first and second failures.

    The commission states that an applicant failed to pass the salesman's examination on January of 1971 and also failed a subsequent salesman's examination in July of 1971. Two real estate salesman's examinations were offered between the applicant's first and second failures and the applicant maintains that the provisions of section 66-1930, Revised Codes of Montana, 1947, requiring a six-month waiting period, do not apply.

Section 66-1930, supra, sets forth the examination requirements for a salesman's license and provides in pertinent part:

> "An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed . . ."

In examining a particular statute relative to its meaning, it is frequently necessary to ascertain the intent of the legislature in enacting the provision. This point is well made in the case of **State ex rel. Williams v. Camp**, 106 Mont. 444, 446, 78 P.2d 585 (1938), in which 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 the cause or necessity in influencing the passage of the Act." (Citing authority)

A similar holding was made in **Doull v. Wohlschlager**, 141 Mont. 354, 365, 377 P.2d 759 (1963), wherein the court stated:

> "In construing a statute, courts must first resort to the ordinary rules of grammar, and in the absence of a clear contradictory intention disclosed by the text, must give effect to the legislative intent according to those rules, and according to the natural and most obvious import of the language, without resorting to subtle and forced construction to limit or extend their operation." (Citing authority)

The legislative intent in enacting the above-quoted provision of section 66-1930, supra, is apparently to require a six-month waiting period for examinees who have twice failed the examination, ostensibly for purposes of preparation so that the possibility of subsequent failure will be reduced. The fact that two other examinations were offered during the period of time between applicant's first and second examinations would appear to be immaterial as far as the intent of the statute is concerned, since the statute specifically provides that "one who has **failed** twice in succession" to pass the examination must wait the required six-month period. Obviously, one cannot fail an examination unless he has in fact taken it and thus the phrase "in succession" must of necessity refer to two consecutive failures and not those interim examintions which the applicant has not taken.

THEREFORE, IT IS MY OPINION that an applicant who has failed the real estate salesman's examination twice in succession is required to wait a period of six months before being eligible to again take the real estate salesman's examination even though other

examinations were offered between the time of the applicant's first and second failures.

Very truly yours,

ROBERT L. WOODAHL
Attorney General