

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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August 11, 1969

DEPARTMENT OF LAW OPINION NO. 69-18 (R-49, 1968, and R-78)

REQUESTED BY: J. FRED TALLEY
Commissioner
State Real Estate Department

WILBUR R. JOHNSON
Executive Director
Arizona Civil Rights Commission

QUESTION: Does the Commissioner of the State Real Estate Department have the right to suspend or revoke a license, or deny the renewal or the right of renewal of a license issued by the State Real Estate Department if a licensee violates the Federal Fair Housing law or the Arizona Civil Rights law?

ANSWER: See body of opinion.

The United States Supreme Court in Jones v. Alfred H. Mayer Co., 892 U.S. 409 (1968), held Section 1 of the Civil Rights Act of 1866 to bar "all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment." The Fair Housing Title of the Civil Rights Act of 1968, prohibits discrimination on the basis of race, color, religion, or national origin in the sale and rental of housing, in the financing of housing, and in the provision of brokerage services. It further prohibits advertisements which indicate a preference on the basis of race, color, religion, or national origin. Clearly, the refusal of a holder of a real estate license to give equal service on the basis of a person's race would be a violation of the Federal Fair Housing law.

A.R.S. § 41-1442, Subsections A and B read as follows:

"A. Discrimination in places of public accommodation against any person because of race, color, creed, national origin or ancestry is contrary to the policy of this state and shall be deemed unlawful.

"B. No person shall, directly or indirectly, refuse to, withhold from, or deny to any person, nor aid in or incite such refusal to deny or withhold, accommodations, advantages, facilities or privileges thereof because of race, color, creed, national origin, or ancestry, nor shall distinction be made with respect to any person based on race, color, creed, national origin, or ancestry in connection with the price or quality of any item, goods or services offered by or at any place of public accommodation."

A.R.S. § 41-1441.2 defines places of public accommodations as follows:

"2. 'Places of public accommodation' means all public places of entertainment, amusement or recreation, all public places where food or beverages are sold for consumption on the premises, all public places which are conducted for the lodging of transients or for the benefit, use or accommodation of those seeking health or recreation and all establishments which cater or offer its services, facilities or goods to or solicits patronage from the members of the general public. Any residential house, or residence in which less than five rooms are rented, or any private club, or any place which is in its nature distinctly private is not a place of public accommodation." (Emphasis added.)

Opinion No. 69-18
(R-49, 1968, and R-78)
August 11, 1969
Page Three

The Supreme Court of the State of California, in interpreting similar statutory provisions of that state, held that their Civil Rights law applies to real estate brokers. Vargas v. Hampton, 20 Cal.Rptr. 618, 370 P.2d 322 (1962); Hudson v. Nixon, 20 Cal.Rptr. 620, 370 P.2d 324 (1962).

A.R.S. § 41-1485 provides that a violation of the Arizona Civil Rights law is a crime and is designated as a misdemeanor.

Title 32, Article 4 of the Arizona Revised Statutes provides for the procedures of licensing persons engaged in the business of a real estate broker or salesman. A.R.S. § 32-2153.A states in part:

"A. The commissioner may suspend, revoke or deny the renewal or the right of renewal of a license issued under the provisions of this chapter, within three years immediately preceding, in the performance of or attempt to perform any acts authorized by such license or by this chapter, has:

* * *

"6. Violated any rules or regulations prescribed by the board."

Rule 20 of the Rules and Regulations of the Arizona State Real Estate Department states:

"The Code of Ethics of the National Association of Real Estate Boards which has been adopted by state and local boards throughout the country is regarded as the standard of conduct by real estate men throughout the United States and shall be regarded as such in the State of Arizona."

Opinion No. 69-18
(R-49, 1968, and R-78)
August 11, 1969
Page Four

Article 3 of the Code of Ethics of the National Association of Real Estate Boards states:

"It is the duty of the Realtor to protect the public against fraud, misrepresentation or unethical practices in the real estate field.

"He should endeavor to eliminate in his community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession. The Realtor should assist the board or commission charged with regulating the practices of brokers and salesmen in his state." (Emphasis added.)

In Opinion No. 63-51-L of the Department of Law, April 2, 1963, it was the opinion of this office that the Arizona Real Estate Commissioner has discretion and authority under A.R.S. § 32-2152.A to make a determination of the ethical aspects of matters which might be raised and to take appropriate action thereon.

A.R.S. § 32-2153.B provides in part:

"B. The commissioner may suspend or revoke a license, deny the issuance of a license, or deny the renewal or the right of renewal of a license issued under the provisions of this chapter when it appears that the holder or applicant therefor, has:

* * *

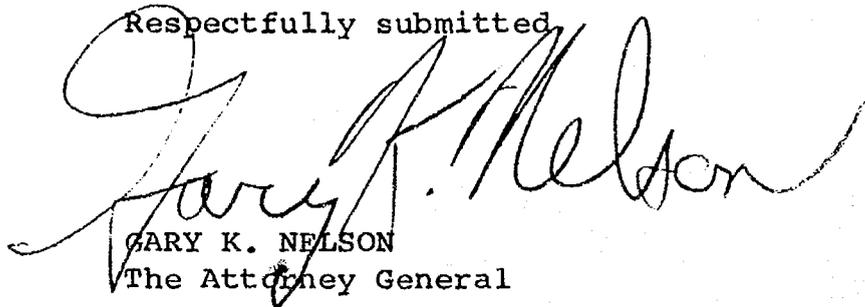
"4. Not shown that he is a person of honesty, truthfulness and good reputation."

The terms "honesty, truthfulness and good reputation" necessarily imply that the holder of a license is required to engage in business within the law.

Opinion No. 69-18
(R-49, 1968, and R-78)
August 11, 1969
Page Five

Thus, it is our opinion that information of a violation or conviction under the Federal Fair Housing law or the Arizona Civil Rights law of a licensee of the State Real Estate Department would be proper subject matter for the Real Estate Commissioner to consider. In any given case, the Commissioner has the right, in his discretion, to consider all existing evidence and circumstances, the gravity of the offense in the particular case, any extenuating circumstances and all like matters in arriving at his decision. If the Real Estate Commissioner, in accordance with administrative due process, decides and orders the suspension or revocation of a license, or denies the right of renewal of a license to a salesman or broker, then such action would be within his statutory authority.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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