

BROKERS: Persons who do not deal as money brokers or exchange dealers are not subject to the provisions of Section 14044 R. S. Missouri 1929.

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July 20, 1935

Mr. Fred A. Renick  
License Collector  
City of St. Louis  
St. Louis, Missouri



Dear Mr. Renick:

We are in receipt of your letter of some time ago requesting further interpretation of Sections 14046 and 14048, R. S. Missouri 1929. Your letter is as follows:

"Thank you for your opinion of May 3 received yesterday relating to stock and bond brokers.

I note that in your opinion persons engaged in the above named business must procure a license and pay the tax fixed in Section 14046, R. S. Mo. 1929. I am surprised, however, that you did not cover Section 14048 in your opinion as it seems to exempt from the provisions of this Act all persons engaged in the stock and bond business except those who actually deal as money brokers or exchange dealers. Although Section 14044 states that no person shall carry on the business of dealing in, or buying or selling bonds, etc. without a license, Section 14048 nullifies it as far as it applies to the regular stock and bond broker by stating that persons who do not deal as money brokers or exchange dealers are not amenable to its provisions. Will you therefore please be good enough to construe Section 14048 for me.

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In view of the fact that none of the established stock and bond firms in this City deal as money brokers or exchange dealers it would seem that they are not liable to the provisions of Section 14046, although all are doing what is commonly called a brokerage business - that is, dealing in, or buying or selling, stocks and bonds.

I fear that I shall encounter considerable difficulty in collecting the graduated scale of taxes specified in Section 14046 from brokers who deal only in stocks and bonds unless I can cite legal authority for so doing - especially since they have only been paying semi-annual State License fee of \$50.00.

Your earliest convenient reply will be very much appreciated."

An opinion rendered by Assistant Attorney General Reagan, on May 3, appears to have answered your precise question as contained in your original request. Section 14048, R. S. Missouri 1929, referred to in your letter, reads as follows:

"Persons who do not deal as money brokers or exchange dealers, except as incidental to their other business and as the exigency and convenience thereof may require, are not amenable to the provisions of this chapter."

Section 14044, quoted by Mr. Reagan in the original opinion, is a general section which is very comprehensive in its terms, while Section 14048, quoted supra, appears to exempt or take out of the general

class those "who do not deal as money brokers or exchange dealers." There has been no decision of our Supreme Court interpreting the two sections in question. In the case of State v. Field 49 Mo. l. c. 272, the court, in discussing the question as to whether or not Savings Banks were required to take out license, said:

"The main question in this case is whether this corporation was required to take out license under the act concerning 'money brokers, exchange dealers, and their licenses.' (See Wagn. Stat. 247). The first section of this act provides that 'no person or association of persons, or company of persons, shall carry on the business of dealing in, or buying or selling, or shaving of any kind of bills of exchange, checks, drafts,' etc., 'without a license for that purpose continuing in force.' Section 2 provides that 'before any person or association, or company of persons, shall receive a license to deal as a money broker or exchange dealer, he or they shall deliver to the collector of the proper county a statement in writing, verified by oath or affirmation, showing the amount of business expected to be done and the capital to be employed in his or their business for the six months next ensuing the delivery of such statement.' Section 8 provides that 'persons violating any of the provisions of this chapter shall be fined not less than \$1,000,' etc.

It is evident to my mind that it was not contemplated by the Legislature that these savings banks should take out licenses as brokers, in addition to the charter under which they are empowered to act. It seems to me that the provisions of the statute concerning money

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brokers and exchange dealers apply only to moral agents who are capable of taking oaths and suffering the penalties inflicted for perjury."

#### CONCLUSION

It is plain and evident, by Section 14048, that persons who do not deal as money brokers or exchange dealers are not subject to the terms of Section 14044. Therefore, you have no legal authority to exact a license under Section 14044 of such dealers. The question of whether or not an applicant does not deal as a money broker or exchange dealer is a question of fact when applying for a license, or when you attempt to exact a license. We think the burden is on the person asserting that he is not a money broker or exchange dealer to prove that he is not such a dealer.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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