

MISSOURI REAL ESTATE
COMMISSION

- Trustee buying property to protect
taxes is not required to have license
from Commission.

February 24, 1942

Hon. James A. Finch, Jr.
Assistant Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

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Dear Sir:

We are in receipt of your request for an official
opinion, which reads as follows:

"Section 11,131, R. S. Mo. 1939, provides for the appointment by the County Court of a suitable person to act as trustee for the county to bid at tax sales under Section 11,130, said purchases to be made by such person as trustee for the county. Such lands or lots so purchased shall then be sold and deeds ordered executed and delivered by the trustee on order of the County Court; the proceeds of the sale to be applied to the payment of costs and taxes. The trustee receives some compensation out of the proceeds, the amount being determined by the County Court, but not to exceed 10% of the purchase price received.

"Senate Bill No. 87, adopted at the 1941 session of the Legislature, and appearing at page 424 of the Session Acts of 1941, sets out the Act creating the Missouri Real Estate Commission, and provides that persons buying and selling real estate with certain exceptions must obtain a license from the Real Estate Commission.

Section 3 of that Act provides in part that it shall not apply to 'any person selling real estate under order of any court.'

"The Missouri Real Estate Commission has advised the Trustee acting for the County Court of Cape Girardeau County that inasmuch as he receives some compensation for his services he must have a license to authorize him to act in that capacity. I should appreciate the opinion of your office as to whether the trustee designated by the County Court of Cape Girardeau County is required to have a license to act in that capacity. It is my understanding that this person does not otherwise engage in business as a real estate agent, and my request is based upon the assumption that the only sales made by him are of land purchased by him as trustee for the county, same being ultimately sold by order of the County Court pursuant to the provisions of Section 11,131."

Laws of Missouri, 1941, page 424, provides for a Missouri Real Estate Commission to control and regulate the buying and selling of real estate in Missouri, by persons in the real estate business.

Section 1 of the Act provides that a license must be procured from the Missouri Real Estate Commission by every real estate broker, or salesman.

In Section 3 of the Act, a real estate broker is defined as:

" * * * any person, copartnership association or corporation, foreign or domestic,

who advertises, claims to be or holds himself out to the public as a LICENSED real estate broker or dealer and who for a compensation or valuable consideration, as a whole or partial vocation, sells or offers for sale, buys or offers to buy, exchanges or offers to exchange the real estate of others; or who leases or offers to lease, rents or offers for rent the real estate of others; or who loans money for others or offers to negotiate a loan secured or to be secured by a deed of trust or mortgage on real property. * *"

Section 3 further provides, however, that:

" * * * nor shall this act apply to a receiver, trustee in bankruptcy, administrator, executor, or any person selling real estate under order of any court, nor to a trustee acting under a trust agreement, deed of trust, or will, nor to the regular employees thereof; * * * ." (Underscoring ours.)

Section 11131 R. S. Missouri, 1939, provides that a county court of any county in order to protect itself from loss upon taxes due them, may, because of inadequate bids upon property sold for such taxes, appoint a trustee to purchase said lots. This trustee holds the property for the benefit of all the funds entitled to participate in the taxes against said property. The statute further provides that:

" * * * All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the County Court. * * Compensation to trustees as herein

designated shall be payable solely from proceeds derived from the sale of lands purchased by them as such trustees * * * ."

There is no doubt that a county court, in ordering a sale of the land, acts judicially. As was said in the case of *Dunn v. Cole County*, 287 S. W. 445, l. c. 448:

" * * * The county court is a court of record and in acting upon matters within its discretion, it exercises judicial functions. In this case Cole county stood in or attempted to assume the relation of an owner or proprietor. The county court acted as for an owner. If the land in suit was property held by Cole county, the determination of the county court that it was expedient to sell it in the manner and for the purpose provided by the statute was a matter within the discretion and power of that court."

A reading of the above, discloses that the trustee receives his compensation only when the land is sold, which property is sold upon the order of the county court. We believe it is clear that the trustee, as such, comes within the exemption above, that is, that he is a "person selling real estate under the order of any court", and, therefore, does not have to have a license to transact such sale. We are aware of the case of *Kansas City v. Fee*, 160 S. W. 537, 174 Mo. App. 501, in which it is held that a fireman employed by a school district came within the purview of a city ordinance requiring all firemen in charge of steam boilers to obtain a city license. This case might be controlling if the statute did not specifically exempt persons selling under an order of court.

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CONCLUSION

A trustee appointed by a county court to purchase lands to protect the tax lien of the county, and to sell such property, is not required to obtain a license from the Missouri Real Estate Commission.

Respectfully submitted

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APPROVED BY:

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