

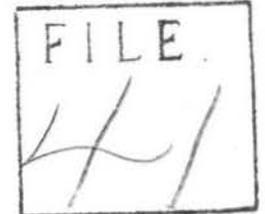
MISSOURI REAL ESTATE
COMMISSION: -

Seven questions.

April 16, 1942

4-17

Missouri Real Estate Commission
Jefferson City, Missouri



Attention - Mr. J. W. Hobbs, Secretary

Gentlemen:

We are in receipt of your letter of April 13, 1942,
requesting an official opinion on seven questions.

I

Your first question reads as follows:

"Request ruling from Attorney General's
office on the rights of the Commission
to exercise discretion in refusing a
broker's license to an applicant whose
record, in the opinion of the Commission,
justifies grounds for declining the ap-
plication. (FOR EXAMPLE: Section 14 of
the Act)."

The statute applicable to the above question is
Section 11, of the Missouri Real Estate Commission Act,
Page 429, Laws of Missouri, 1941, which reads as follows:

"The commission may deny an application
for a license, or suspend or revoke a li-

cense issued, only after a hearing, of which the applicant or licensee affected shall be given at least ten days' written notice specifying the reason for denying the applicant a license, or, in case of a suspension or revocation, the offense or offenses of which the licensee is charged. Such notice may be served as provided by law for the service of notices, or by mailing a copy by registered mail to the last known residence or business address of such applicant or licensee. The hearing on such charges shall be at such time and place as the commission may prescribe. If such applicant or licensee is a salesman, the commission shall also notify the broker with whom associated, or in whose association he is about to enter, by mailing a notice by registered mail to the broker's last known business address. The commission shall have the power to compel the production of records and papers bearing upon the complaint. The commission shall have the power to subpoena and bring before it any person in this state or take testimony of any such person by deposition with the same fees and mileage and in the same manner as prescribed by law in judicial procedure, before courts of this state in civil cases. Any party to such hearing shall have the right to the attendance of witnesses in his behalf upon designating to the commission the person or persons sought to be subpoenaed. The commission shall have the power to issue subpoenas under the seal of the commission and direct the service of the same. If the commission shall determine that any applicant is not qualified to receive a license, a

license shall not be granted to said applicant, and if the commission shall determine that any licensee is guilty of violation of any of the provisions of this act, his or its license shall be suspended or revoked. The findings made by the commission acting within its power shall, in the absence of fraud, be conclusive but the circuit court of the county in which said hearing is had or where such licensee or applicant resides shall have power to review said proceedings on writ of certiorari, or other proper proceedings, provided, that application is made by the aggrieved party within thirty days after the determination of the commission; or said hearing may be by mandamus brought in a court of competent jurisdiction and such court shall make such other orders in respect thereto as justice may require, and the return of the commission to any writ issued by said court shall be accompanied by a transcript of the papers filed and proceedings had before said commissioner duly certified. All expenses and costs of proceeding and hearing under this section shall be assessed and paid as costs are assessed and paid in any court of record."

Under the above section the Commission may deny an application for a license only after a hearing, of which the applicant shall be given at least ten days written notice, specifying the reason for denying the application. The Commission, in its discretion may refuse a license to the applicant, under Section 7, of the Missouri Real Estate Commission Act, Page 427, Laws of Missouri, 1941, which reads as follows:

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"A license shall be granted only to persons who bear, and to corporations or associations whose officers bear, a good reputation for honesty, integrity, fair dealing, and who are competent to transact the business of a real estate broker or a real estate salesman in such manner as to safeguard the interests of persons whom they represent."

CONCLUSION

It is, therefore, the conclusion of this department that the Missouri Real Estate Commission can exercise its discretion in refusing a license to a broker whose record justifies grounds for declining the application in accordance with Section 7, of the Missouri Real Estate Commission Act.

II

Your second question reads as follows:

"Request a ruling from the Attorney's office on the rights of the Commission to exercise discretion in refusing broker's license to an applicant whose principal source of income is not derived from real estate. (FOR EXAMPLE: We have an application from an accountant employed by the Kansas City Power and Light Company,

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who states he uses his spare time, including some Saturday afternoons and Sundays, trying to sell real estate). (Another example is an attorney who is actively engaged in the practice of law, and who has become an expert on foreclosure; in fact, he follows foreclosure notices and solicits the mortgagor to permit him to file a bond for redemption. Many real estate offices and loan companies have had difficulty with him, as he files notices to redeem properties, posts bonds, collects his fee, and at the end of the redemption period the mortgagee secures possession. The only service he has rendered is possibly keeping the mortgagor in possession of the property for a number of months)."

As to the first part of this question in reference to an accountant employed by the Kansas City Power & Light Company, we refer you to Section 3, of the Missouri Real Estate Commission Act, Page 425, Laws of Missouri, 1941, which partially reads as follows:

"A real estate broker is 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, buy or offers to buy, exchanges or offers to exchange the real estate of others; * * * ."

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The second part of your question, which refers to an attorney, is covered by the same section, wherein it states:

" * * * nor shall this act be construed to include in any way the service rendered by an attorney-at-law in the performance of his duties as such; * * * ."

Under the facts set out in the second part of your second question, even though it states that he has interfered with the rights of the mortgagor in obtaining possession of the property, yet, it is a legal proceeding and the attorney is not required to obtain a broker's or salesman's real estate license.

CONCLUSION

It is, therefore, the opinion of this department that under the facts stated in your second question the Missouri Real Estate Commission may exercise its discretion in refusing a broker's license to the accountant employed by the Kansas City Power & Light Company, by reason of Section 7 of the Missouri Real Estate Commission Act, Page 427, wherein it states:

" * * * and who are competent to transact the business of a real estate broker or a real estate salesman in such manner as to safeguard the interests of persons whom they represent."

We further hold that the Missouri Real Estate Commission may grant a license to the accountant, even though

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he only uses his spare time trying to sell real estate.

It is further the opinion of this department that an attorney actually engaged in the practice of law, in following his profession, which includes real estate transactions, is not required to obtain a real estate license.

III

Your third question reads as follows:

"Request a ruling from the Attorney General's office on the question of the rights of the Commission to exercise discretion in refusing broker's license to an applicant who has been convicted, served a sentence, and is on parole."

The statute applicable to the above question is Section 14, of the Missouri Real Estate Commission Act, Page 430, Laws of Missouri, 1941, which partially reads as follows:

" * * * No license shall be issued by the commission to any person known by it to have been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses, or association or copartnership of which such person is a member, or to any association or copartnership of which such person is an officer, or in which as a stockholder such person had or exercises a controlling interest either directly or indirectly."

The above partial section sets out specific crimes of which persons have been convicted, and specifically states that the Commission cannot grant a license to such a person.

If the crime of which the applicant has been convicted is not set out in Section 14, supra, then the Missouri Real Estate Commission, in its discretion, may refuse to grant a license to the person, by reason of Section 7 of the Missouri Real Estate Commission Act, which provides that the license shall be granted only to persons who bear good reputation for honesty, integrity and fair dealing.

CONCLUSION

It is, therefore, the opinion of this department, in answer to your third question, that the Missouri Real Estate Commission may exercise its discretion in refusing a broker's license to an applicant who has been convicted, served his sentence and is on parole.

IV

Your fourth question reads as follows:

"Request a ruling from the Attorney General's office on the rights of the Commission to exercise discretion in refusing a license on the question of incompetency due to lack of training or experience of the applicant. We have an applicant who states

he has not been in the real estate business but intends to engage in the business, having had no previous experience or training. Could we refuse, at least for a period of six or twelve months to allow this applicant to secure a license."

The statute applicable to the above question is Section 7, Missouri Real Estate Commission Act, Page 427, Laws of Missouri, 1941, which reads as follows:

"A license shall be granted only to persons who bear, and to corporations or associations whose officers bear, a good reputation for honesty, integrity, fair dealing, and who are competent to transact the business of a real estate broker or a real estate salesman in such manner as to safeguard the interests of persons whom they represent."

This section specifically states that the license shall only be granted to persons who are competent to transact the business of a real estate broker, or real estate salesman in such a manner as to safeguard the interests of persons whom they represent.

CONCLUSION

It is, therefore, the opinion of this department that the Missouri Real Estate Commission, may refuse a license to an applicant on the question of incompetency due to lack of

training or experience of the applicant.

It is further the opinion of this department that the Commission could refuse a real estate license to a broker, but must follow the procedure as set out in Section 11, of the Missouri Real Estate Commission Act.

V

Your fifth question reads as follows:

"Request a ruling from the Attorney General's office on the rights of the Commission to deny an application for a broker's license to an applicant who does not have a place of business, but who attempts to carry on his business from a residence which may be zoned against business, or which in the title itself restricts the residence for private dwelling purposes."

After a careful search of the Missouri Real Estate Commission Act, as it appears at page 424, Laws of Missouri, 1941, we find no provision that specifically provides that the applicant must have a place of business before being granted a license, and for that reason we hold that it is not necessary that the applicant have a place of business. We further hold that the question of "zoning" is a matter for other authorities, and not the Missouri Real Estate Commission.

VI

Your sixth question reads as follows:

"Request a ruling from the Attorney General's office on the rights of the Commission to refuse a license to an applicant who has been refused by some other Department of the State. (FOR EXAMPLE: We have an application from an applicant who is subject to a Missouri Securities Commission cease and desist order.)"

The statutes applicable to this question are sections 7 and 14 of the Missouri Real Estate Commission Act, Laws of Missouri, 1941. Under Section 7 if the applicant does not bear a good reputation the application may be denied and it is in the discretion of the Missouri Real Estate Commission, also, under Section 14, if the applicant has been found guilty of any of the crimes therein included, to deny the application. That the applicant has been refused a license in other state departments does not, in itself, preclude the Commission from granting the license.

CONCLUSION

It is, therefore, the opinion of this department that the Missouri Real Estate Commission, in its discretion, under Sections 7 and 14 of the Missouri Real Estate Commission Act may refuse a license to an applicant, but not on the fact that he has been refused a license in some other state department.

VII

Your seventh question reads as follows:

"Request a ruling from the Attorney General's office on how far the Commission can go to stop a person who advertises in the newspapers as an agent and broker, or who is listed in an office building tenancy list as an agent or real estate broker, and uses this designation on letter-heads but refuses to apply for a license. Can the Commission stop such a party."

The section applicable to this question is Section 17, of the Missouri Real Estate Act, Page 431, Laws of Missouri, 1941, which reads as follows:

"Any person or corporation violating any provision of this act shall be guilty of a misdemeanor, and, if a person, be punished by a fine of not more than \$500 or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment, and if a corporation shall be punished by a fine of not more than \$1,000. Any officer or agent of a corporation, or member or agent of a copartnership or association, who shall personally participate in or be an accessory

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to any violation of this act, shall be subject to the penalties herein prescribed for individuals. This law shall not be construed to release any person from civil liability or criminal prosecution under the general laws of this state. The commission may cause complaint to be filed for violation of Section 1 of this act in any court of competent jurisdiction, and perform such other act as may be necessary to enforce the provisions hereof."

As provided in the above section, the Commission may, under Section 1 of the Missouri Real Estate Commission Act, prosecute a person who acts as a real estate salesman or broker without a license.

CONCLUSION

It is, therefore, the opinion of this department that if any person or corporation violates any of the provisions of the Missouri Real Estate Commission Act, he, or it, may be prosecuted by the Commission.

Respectfully submitted

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General of Missouri

WJB:RW