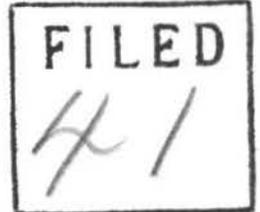


REAL ESTATE COMMISSION: Commission does not have power to
request a certificate from appli-
APPLICATION FOR RENEWAL cant as to sales made between date
LICENSE: of expiration of former license and
renewal application.

June 14, 1944

Mr. J. W. Hobbs, Secretary
Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri



Dear Mr. Hobbs:

We have for attention your letter of June 12th, 1944, in which you request the opinion of this department on the questions therein submitted. Your letter sets forth clearly the questions you desire answered in this opinion and we set forth your letter in its entirety, as follows:

"May this Commission request an opinion on the following:

"There appear to be quite a number of licensees issued licenses last year who pay no attention to instructions on applications, renewal applications, and license certificates, that all licenses expire on December 31st of the year in which they are written, and that all licenses must be renewed on January 1st of the ensuing year.

"Many licensees wait for several months before sending their renewal applications for a license and in many cases they negotiate sales through contracts and verbally, then apply for their licenses. Does the Commission have the power, upon receipt of renewal applications, to request a signed certificate to the effect that the applicant had not attempted and had not made sales, loans, leases, etc. during the part of the year in which they had no license?

"This abuse is quite extensive and will continue to occur unless there are some regulatory steps taken."

The Missouri Real Estate Act, found at page 424, et seq., Laws of Missouri 1941, was enacted for the purpose of protecting the legitimate real estate salesmen, dealers and brokers in their profession, and also for the protection of the public who deal with real estate brokers, salesmen and dealers, and requires that the licensees under the Act comply with the laws of the state of Missouri in the operation of their business. There are in this Act certain sections which penalize those who operate without securing from the Real Estate Commission a license to conduct a real estate business.

Section 11 of the Act empowers the Commission to deny an application for a license, or suspend or revoke a license 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. And there are certain regulatory provisions governing the action of the Commission in connection therewith.

It will be observed that by Section 16 of the Act no person, copartnership, corporation or association, acting in the capacity of a real estate broker or real estate salesman, shall bring or maintain an action for a real estate commission unless he was a licensed real estate broker or salesman at the time when the alleged cause of action arose. So, any of the above entities could not collect a real estate commission unless they had a license at the time the alleged cause of action arose. Hence, any person not having a license would jeopardize their commission and could not collect same in the state of Missouri.

Further, by Section 17 of the Act a person who violates any provision 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. It will be seen, therefore, that there exists in Missouri a very severe penalty for any of the above entities to prosecute a real estate business without first procuring a license; and, it must be observed also, that until the enactment of this Act there was no criminal penalty for operating without a real estate license.

June 14, 1944

The General Assembly therefore has placed in the hands of the prosecuting officers a weapon to enforce the provisions of the law and also, the real estate dealer who violates this Act may lose his real estate dealer's commission.

We think your inquiry is whether the Commission has the power and is authorized, upon the receipt of renewal applications to request a signed certificate to the effect that the applicant had not attempted and had not made sales, loans, leases, etc., between the time of the expiration of his former license and the date of the application for a renewal, and, in the event he refuses or neglects to sign a certificate incorporating the above facts, that the Commission may refuse to grant a license until the applicant has complied with such request. In other words, may you make such an enforceable rule?

We do not think it would be practicable for the Commission to make such a rule and regulation and, if the applicant did comply with it, deny a license to him solely on that ground, because Section 11 does not make that one of the prerequisites to securing a license. Of course, if a person makes an application for a license and the Commission finds that the applicant has violated the provisions of the Missouri Real Estate Act it may, in its judgment, refuse to issue a license.

CONCLUSION

It is, therefore, our opinion that the Commission does not have the power to make such a rule and enforce same, solely upon the ground that the applicant for a renewal of his license has not complied with such rule and regulation.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

CRH:CP