

MISSOURI REAL ESTATE
COMMISSION:

Power to issue license, minor.

August 10, 1945



Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri

Attention: Mr. John W. Hobbs, Secretary

Gentlemen:

Reference is made to your letter dated July 6, 1945, requesting an official opinion of this office, and reading as follows:

"The Missouri Real Estate Commission requests an opinion from your office on the following:

"Under the Missouri Real Estate License Law can the Commission issue a license to an eighteen year old boy applicant for a Salesman's license, working for a licensed Broker?"

"The Commission desires to be informed if it can license a minor under the present license law."

The definition of "real estate broker" is found in Section 3 of the act creating the Missouri Real Estate Commission and appears in Laws of 1941, page 425. Said Section 3 reads, in part, as follows:

"A real estate broker is any person, co-partnership 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, rent 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."

A further definition of the term "real estate salesman" appears in the same section. Such definition reads as follows:

"A real estate salesman, within the meaning of this act, is any person, who for a compensation, or valuable consideration becomes associated, either directly or indirectly with a real estate broker to do any of the things above mentioned, as a whole or partial vocation."

The requirements imposed upon persons seeking to be licensed as either real estate brokers or real estate salesmen appear in Section 7 of the act found in Laws of 1941, at page 427, 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."

It is apparent from the foregoing that the requirements are directed solely to two qualifications: First, that the

applicant for the license be a person bearing a good reputation for honesty, integrity and fair dealing, and, second, that such applicant be a person who is 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 he represents.

While unquestionably a minor could meet the first requirement with respect to procuring a license, yet such minority, we believe, would become of paramount concern in determining his "competency."

"Competent" is defined in Words and Phrases, Perm. Ed., page 237, as follows:

"The word 'competent' means answering to all requirements; adequate; sufficient, suitable; capable, legally qualified; fit."

Under the law of Missouri, a person is a minor until having reached the age of twenty-one years. We quote, in part, from Section 374, R. S. Mo. 1939:

"All persons of the age of twenty-one years shall be considered of full age for all purposes, except as otherwise provided by law, and until that age is attained, they shall be considered minors:
* * * "

The general rule with respect to the rights of minors to hold public office is stated in 31 C. J., Infants, page 1004, as follows:

"At common law infants are eligible to offices which are ministerial in their character and call for the exercise of skill and diligence only; but they are not eligible to offices which are judicial or concern the administration of justice, nor should offices imposing duties to the proper discharge of which judgment, discretion and experience are necessary be intrusted to infants."

We believe that the duties which are imposed upon a real estate broker or real estate salesman are such that possibly would entail the exercise of judgment and discretion which necessarily could arise only from past experience, thereby coming within the last quoted clause of the rule as stated supra.

In the exercise of its discretion in granting or refusing licenses, the Missouri Real Estate Commission must necessarily be guided by certain general rules applicable to all boards or commissions having the right to pass upon the qualifications of persons seeking to exercise privileges. One of such rules is this, found in 37 C. J., Licenses, page 240:

"The power vested in the board or officer to grant licenses upon the applicant complying with the prescribed conditions, unless mandatory in terms, carries with it, either expressly or impliedly, the power of exercising, within the limits prescribed by the act or ordinance, a reasonable discretion in granting or refusing licenses. But this discretion must be exercised reasonably, and not arbitrarily, and furthermore arbitrary power in this respect ordinarily cannot be conferred on such board or officer. In exercising this discretion the board or officers should consider all the circumstances against, as well as in favor of, granting the license, and act in accordance with what they believe to be in the interest of the public safety or public welfare, and if for good reasons they are satisfied that the license ought not to be granted, they are justified in refusing it."

We think that this general rule, as applied to the functioning of your particular board, would have the effect of permitting the Missouri Real Estate Commission to make reasonable requirements as to past experience and to require the applicant to show that he has sound business judgment and discretion. If, under such rules, a minor were unable to qualify, we believe the Commission would be fully justified in refusing to

grant him a license for failure to establish himself as a "competent" person.

Further, we direct your attention to the following excerpt from 43 C.J.S. "Infants" page 162:

"* * * However, it has been said that, under the modern rule, this classification is abandoned in favor of permitting the infant, when he has become of age, to determine what contracts are, and what are not, to his interest and liking. The general rule, ignoring the distinction above made, is that, with certain exceptions, as in the case of contracts for necessities, as discussed infra Sec. 78, contracts authorized by law, and those entered into in the performance of a legal duty, and in some special cases of actual and active fraud, the contracts of an infant, whether executed or executory, are voidable, and such contracts of an infant are voidable at his election or option after attaining his majority, and not void, in the absence of a statute providing otherwise. In this connection it has been said that one deals with an infant at his peril, particularly when doing so with knowledge of his incapacity.

"The incapacity of an infant to bind himself by contract is not removed by the mere fact that he has no parent or guardian, or by the fact that he is employed and receiving his wages from the employment. The approval by a parent of his infant child's contract does not validate it. * * * * *"

Also, the following excerpt from 27 Am. Jur. "Infants" page 770:

"The contract of an infant for his performance of labor or personal services is voidable at his election. If he wishes, he may refuse to perform, upon the ground that he is an infant, and his refusal does not

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render him liable in damages. On the other hand, if the infant wishes, he may perform his part of the contract, and in case of a breach by the other party, a right of action upon the contract arises."

In view of the types of services to be performed by real estate brokers or salesmen, we believe the incapacity of infancy to be such as to render a "minor" incompetent within the meaning of Section 7, Laws of 1941, page 427. We are persuaded to this view particularly by the innumerable controversies that could so easily arise between principal and agent or employer and employee, when one of the contracting parties is a minor.

CONCLUSION

In the premises, we are of the opinion that the Missouri Real Estate Commission cannot issue a license to a minor as a real estate broker or real estate salesman for the reason that the inherent disabilities of infancy render such minor incompetent within the purview of Section 7, Laws of 1941, page 427.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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