

REAL ESTATE COMMISSION: Banking institutions and savings and loan
LICENSES: associations which charge fees for making
loans or charge discount points for making
loans from their own funds are not required to obtain a real estate
license under the Missouri Real Estate License Law.

OPINION NO. 280

June 18, 1968



Mr. James Flanagan, Chairman
Missouri Real Estate Commission
1710 Commerce Tower
Kansas City, Missouri

Dear Mr. Flanagan:

This is in reply to your opinion request of May 7, 1968, asking whether savings and loan associations and banking institutions which charge fees for making loans or charge discount points should be licensed under the Missouri Real Estate License Law.

Section 339.010, RSMo Supp. 1967, is the applicable section relating to licensing of individuals and institutions engaging in the real estate business and is set out below in pertinent part:

" * * * nor shall this chapter apply to
* * * any bank, trust company, building
and loan association, insurance company
or farm loan association * * * when en-
gaged in the transaction of business on
its own behalf and not for others. * * * "

As set out above, this section clearly deals with the matter of banking institutions and is intended to apply to savings and loan associations since Section 369.020(1), RSMo 1959, defines them as associations, previously using the name "Building and Loan Associations," and states that same are excluded from the operation of Chapter 339 when business is being transacted on their own behalf. The question then becomes whether making loans and charging fees therefor constitutes business on the organization's own behalf or is a transaction on behalf of others.

Mr. James Flanagan

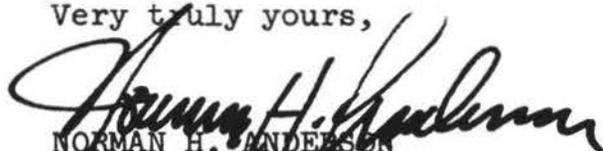
In answering this question, it is necessary to consider the nature of the relationship which exists between depositors and a banking institution or savings and loan institution. It is well settled that the aforementioned relationship in regard to banks is that a debtor and creditor since money when deposited in a bank becomes the property of said bank, the bank then becoming a debtor of the depositor. In regard to savings and loan associations, a depositor actually purchases an interest in the association, the funds becoming the property of the association itself. This being the case, it is the opinion of this office that the making of loans out of such aforementioned funds clearly is the transaction of business on those organizations' own behalf and not on behalf of others.

CONCLUSION

Therefore, it is the opinion of this office that banking institutions and savings and loan associations which charge fees for making loans or charge discount points for making loans from their own funds are not required to obtain a real estate license under the Missouri Real Estate License Law.

The foregoing opinion, which I hereby approve, was prepared by my assistant, L. Michael Lorch.

Very truly yours,



NORMAN H. ANDERSON
Attorney General