

STATUTES) Statutes should be construed broadly enough to carry
IN EXPERIENCE:) out intention of Legislature. Sec. 8195, R. S. 1939,
does not confine those eligible for appointment to
those experiences "within" the building & loan business.

April 7, 1944

4/10



Honorable Forrest C. Donnell
Governor
State of Missouri
Jefferson City, Missouri

Dear Governor Donnell:

The Attorney-General is in receipt of your letter of April 4, 1944, requesting the opinion of this department. Your letter is as follows:

"Section 8195 of the Revised Statutes of Missouri of 1939 reads as follows:

"No person shall be eligible for the office of supervisor of building and loan associations unless he shall have had at least two years' actual experience in the general building and loan business."

"There is enclosed copy of letter, dated March 2, 1944, signed Hilles R. Leslie, to myself. Your opinion is respectfully requested on the following question:

"Has Mr. Hilles R. Leslie had, within the meaning of said Section 8195, at least two years' actual experience in the general building and loan business?"

Mr. Leslie's letter, to which you refer, reads as follows:

"Since T. Victor Jeffries, the Supervisor of the Bureau of Building and Loan Supervision, has resigned his office I am an applicant for the appointment as Supervisor.

"I have been employed by Mr. Jeffries as an Examiner in the Bureau of Building and Loan Supervision for a period of two years and seven months. My duties have been making examinations of Building and Loan Associations and acting as Chief Examiner. The examinations are made by the examining force of which I am a member and sent to the office, where they are worked over by me and letters of criticisms written to the Board of Directors of the associations, calling attention to any matter pertaining to the laws of Missouri governing Building and Loan associations. In working at this work, I feel that I have had an opportunity to participate in the General Building and Loan Business in detail, for it is often necessary to confer with managing officers of Building and Loan associations relative to their management and business practices.

"I have spent eleven years in the banking business, which of course makes mortgage loans the same as Building and Loan associations in practically the same form. The difference in banking and building and loan practices are matters of the stock structure only.

"As a precedent, I wish to call your attention to the fact that Governor Stark appointed J. W. McCammon, Supervisor where his background had been the same as mine with the exception of the fact that he had no experience in the mortgage loan business other than the fact that he had been an examiner in this Department the same as I have been.

"Your consideration of my application for the appointment as Building and Loan Supervisor will be very much appreciated."

Construction of Section 8195, R. S. Mo. 1939, seems to be a matter of first impression. This section was originally passed in 1927 and although the chapter has been repealed and various sections amended, this section appears in its original form without amendment. The question presented revolves around the phrase, "in the general building and loan business." Does this mean that applicant, in order to be eligible for appointment hereunder, must have spent the prescribed minimum of time within the organization of a building and loan association or will experience gained in his capacity as State Examiner for the State Bureau of Building and Loan Supervision, suffice?

In every instance of statutory construction, consideration must be given to the intention of the Legislature. In State ex rel. Wabash Railroad Co., et al. v. Shain et al., 106 S. W. (2d) 1. c. 899, the court stated:

"The cardinal rule to be followed in the construction of statutes is to arrive at the legislative intent. 'Rules for the interpretation of statutes are only intended to aid in ascertaining the legislative intent, "and not for the purpose of controlling the intention or of confining the operation of the statute within narrower limits than was intended by the lawmakers"' Sutherland on Statutory Construction, par. 279. If the intention is clearly expressed and the language used is without ambiguity, all technical rules of interpretation should be rejected."

It seems clear that the prime consideration for eligibility is actual experience. Certainly, it cannot be said that applicant has no experience in matters pertaining to building and loan associations, since he has been an examiner of the affairs of such companies. A strict interpretation might be carried even further. An applicant might be found ineligible if, although he had been employed by a building and loan company, the company was not actually conducting a general building and loan business. The words "actual" and "experience" are also susceptible of strict interpretation further limiting the scope of this statute. The phrase and words above set forth are all of a general nature. To interpret this section strictly and limit the field of applicants to those alone who have been employed

by a general building and loan association, would confine the operation of this statute within narrower limits than was intended by the Legislature, the obvious purpose of the statute being to appoint one who is familiar with and skilled in the operation of the building and loan business.

25 C. J., p. 176, defines the word "experience" as follows:

"The term, as commonly understood, means, knowledge gained by observation or trial; knowledge derived from proof furnished by one's own faculties instead of by reason."

As was stated in Chicago, I. & L. Railroad Co. v. Gorman, 106 N. E., l. c. 899:

"The word 'experience' implies skill, facility or practical wisdom, gained by personal knowledge, feeling or action. International Dictionary."

In Stanley v. C. M. & St. P. Railroad Co., 112 Mo. 601, l. c. 607, the court stated:

"The word 'experience' means, 'to have practical acquaintance with,' which is equivalent to knowledge."

The following statement is found in State ex rel. Kenney et al., v. Missouri Workmen's Compensation Commission, 40 S. W. (2d), l. c. 504:

"The fundamental rule in the construction of statutes is to ascertain and give effect to the purposes of the Legislature (Consolidated School Districts v. Hackmann, 302 Mo. 558, 258 S. W. 1011), and a statute must be liberally construed in the light of its underlying reasons, keeping in mind the furtherance of the purpose sought thereby (St. Louis S. F. R. Co. v. Public Service Commission of the State of Missouri, 254 U. S. 535, 41 Sup. Ct. 192, 65 L. Ed. 389)."

Having in mind the above rules of statutory construction, it would seem that the only fair interpretation to be placed on this section would be an interpretation broad enough to effect the intention of the Legislature. To hold that the word "in" means "within," would constitute, in view of the purpose or the intent of the Legislature, the strictest kind of an interpretation and would narrow and limit the scope of this section.

In the case of *Lambe v. Donaldson S. S. Line*, 22 Que. Super. 510, 516, the word "in" was held not to be as emphatic as the word "within," in some senses. It is our thought that the word "in," as it is used here, conveys the idea "in connection with." As is stated in 31 C. J. 354, the word "in" is defined as follows:

"A word denoting presence, time or state: not out. The writing in which the term appears must always be considered and looked to for the proper determination and ascertainment of the sense in which the word is used."

It is also significant that the word "the" is used instead of "a." The word "the" embraces an entire group as opposed to the use of the word "a," which would clearly limit the field.

Conclusion

It is the opinion of this department that an applicant who has had at least two years' actual experience in connection with building and loan businesses, is eligible for appointment, and that Section 8195, supra, does not confine eligibility to those actually in the employ of a building and loan company. Whether the present applicant possesses the experience required in comparison with other applicants, is a matter within the discretion of the Governor.

Respectfully submitted,

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APPROVED:

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Attorney-General