

MISSOURI REAL ESTATE  
COMMISSION

- Two corporations must obtain  
two licenses, but salesmen  
should only obtain one license.

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March 6, 1942

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Missouri Real Estate Commission  
Jefferson City, Missouri



Attention - Mr. J. W. Hobbs, Secretary.

Dear Sir:

We are in receipt of your request for an opinion,  
which reads as follows:

"May the Commission request an opinion  
in regard to two separate corporations  
doing a real estate business in Missouri  
and the officers actively engaged in  
the real estate activities are the same  
in both corporations. We have several  
instances where the officers are the  
same but the corporations are two  
separate operating companies and some  
contend that they should pay only one  
fee as members of both corporations."

Section 2, of the Missouri Real Estate Commission  
Act, Laws of Missouri, 1941, page 425, reads as follows:

"A corporation, copartnership or  
association shall be granted a license  
when individual licenses have been is-  
sued to every member or officer of such  
copartnership, association or corpora-  
tion who actively participates in its  
brokerage business, and to every person  
who acts as a salesman for such co-  
partnership, association or corporation."

Under the above Section, a corporation, copartnership or association cannot obtain a real estate license unless every member or officer, and every person who acts as a salesman has obtained such a license.

Under Section 3 of the same Act, it is specifically stated:

"\* \* \* 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. \* \* \* "

We find no provision in the Act that the salesman should procure a separate license to do business for each individual corporation.

It is also noticeable that under Section 9 of the Act, an annual fee for real estate brokers' licenses shall be Five (\$5.00) Dollars, and when issued to a corporation there shall be an additional annual fee of Two (\$2.00) Dollars for each member or officer who actively participates in the real estate business. Under this Section the officers and members of each corporation shall pay the additional Two Dollars, but there is no provision that the salesmen should obtain additional licenses. It does provide though that the annual fee of a real estate salesman's license shall be Two Dollars and Fifty Cents (\$2.50). The statutes should be read together, and if it was the intention that each salesman of a corporation should obtain an additional license in order to sell real estate for another corporation it would have been mentioned in Section 9, as an additional fee.

As to the corporation license they are separate entities and, although they have the same officers, they should obtain a license for each corporation.

It has been repeatedly held that a corporation is distinct and separate from its members or stockholders. 14 C. J., page 58, section 19, states the rule as follows:

"Since a corporation is a person distinct from its members or stockholders, it follows that, even though the same individuals may be the incorporators of, or own stock in, two separate corporations, and even though such corporations may have the same individuals as officers, there is no identity between the two corporations, and neither is liable for the acts or faults of the other merely because of the identity of the members or stockholders and officers. A holding corporation has a separate corporate existence, and is to be treated as a separate entity, unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth."

Also, in the case of Knott v. Fisher Vehicle Woodstock & Lumber Co., of Erin, Ark., 190 S. W. 378, the court said:

"This is an interplea ingrafted on an attachment suit. The defendant in the attachment is the Fisher Vehicle Woodstock & Lumber Company, a Missouri corporation, and the interpleader is a corporation of Arkansas with practically the same name. For convenience we

will designate the defendant as the Missouri corporation and the interpleader as the Arkansas corporation. The Missouri corporation became indebted to plaintiff, and he brought suit and attached the property of interpleader, some woodworking machinery, as defendant's property, and the Arkansas corporation has interpleaded claiming ownership. A. B. Fisher purchased this attached machinery from an Indiana manufacturing company and mortgaged it back to secure \$2,500 of the purchase price. Fisher then helped to organize the Missouri corporation, which took over the property subject to the mortgage which had been duly recorded. The Missouri corporation became involved in debt and made default in the payment of this mortgage debt. The mortgage was foreclosed by the holder of the note, and Indiana bank, and that bank became the purchaser and owner of the machinery. Fisher then helped organize the Arkansas corporation, and the Indiana bank sold this machinery to it. Plaintiff, a creditor of the Missouri corporation, attached this property of the Arkansas Corporation as belonging to the former."

The court further said, at l. c. 379:

"There was no fraudulent conveyance by the Missouri corporation, plaintiff's debtor, and, unless the property on its transfer to the Arkansas corpora-

tion became the property of the Missouri corporation, plaintiff had no right to attach it. This, however, was not the theory upon which plaintiff recovered, as his instruction predicated his right to recover on the transfer being fraudulent. This particular property was no more subject to attachment as the property of the Missouri corporation than was any other property owned by the Arkansas corporation. Similarity or even identity of names does not make the identity of corporations formed under different sovereignties. Even if there was identity of stockholders, the corporations would be distinct (10 Cyc. 287; 5 Thompson on Corporations, sections 5985, 6094; Richmond & I. Const. Co. v. Richmond, etc., R. Co., 68 Fed. 105, 15 C. C. A. 289, 34 L. R. A. 625; \* \* \* \* \* " )

In the above case the stockholders of the Missouri Corporation were the same stockholders of the Arkansas Corporation. The court in that case, under the facts as set out in the case, held that the two separate corporations were not formed for any fraudulent purpose. The rule is greatly discussed in the case of Majestic Company v. Orpheum Circuit, 21 Fed. 2d 720, l. c. 724, where the court said:

"In legal conception a corporation has an entity separate and distinct from its stockholders; and the act of the corporation is not that of the stockholders. Nor is its obligation that of its stockholder. (Cases cited.) \* \* \* \* \* ." (Parenthesis and explanation therein ours.)

March 6, 1942

In the above cases cited and set out in the above partial opinion in that case, it appears that the rule is not settled conclusively, but is a mixed question of fact and law; that in each case a separate rule or opinion could be formed, all depending upon the facts in the case. It is all based upon the general rule that the legal entity of a corporation is recognized and the courts uphold the separate and distinct entity in all cases, except in very few exceptions where it is used as a blind, or instrumentality to defeat public convenience, justify wrong, or perpetrate a fraud, and in that case the courts have interpreted the corporation as an association of persons.

CONCLUSION.

In view of the above authorities, it is the opinion of this department that two separate corporations having the same officers should obtain two licenses, as set out in Section 2 of the Real Estate Commission Act, but real estate salesmen employed by two separate corporations are not compelled to obtain two licenses.

APPROVED:

Respectfully submitted

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