

MISSOURI REAL ESTATE
COMMISSION -

Missouri Real Estate Commission Act
is not - and cannot be - retrospective
to contracts entered into before January
1, 1942, as to real estate commissions.

June 1 , 1942

Missouri Real Estate Commission
Jefferson City, Missouri

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



Gentlemen:

We are in receipt of your letter of May 25, 1942,
in which you request an official opinion as follows:

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

"Prior to the first of January 1942
a salesman employed by a broker, the
salesman made a lease on a certain
piece of property. Under the lease
the lessees were given an option to
buy the premises any time during the
term of the lease. The salesman left
the employ of the broker in October
1941. A definite agreement was made
at the time the salesman left the em-
ploy of the broker that if the lessee
would exercise the option the salesman
would receive the usual part of the com-
mission based on the selling price. In
April 1942 the parties exercised their
option and a sale was consummated. Is
the broker now liable to the salesman
who has quit or withdrawn from the
business? Would the broker be vic-

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lating the real estate license act if he paid the salesman who at this time has no license a part of the commission collected?"

Section 1, of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 425, reads as follows:

"License must be procured. - After January 1, 1942, it shall be unlawful for any person, copartnership, association or corporation, foreign or domestic, to act as a real estate broker or real estate salesman, or to advertise or assume to act as such without a license first procured from the Missouri Real Estate Commission."

Under the above section the Missouri Real Estate Commission Act did not become effective until January 1, 1942. We are assuming that the contract, to which you refer in your request, was consummated before January 1, 1942.

Section 15, of Article II of the Constitution of Missouri, reads as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

In view of the fact that the legislature set January 1, 1942, as the effective date, we believe that it was the intention of the legislature not to violate Section 15, of

Article II of the Constitution of Missouri, when it enacted Section 15, of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 430, which reads as follows:

"Fees shall not be paid to unlicensed persons. - No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service rendered by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless such a person is a licensed real estate salesman regularly associated with such broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside of the State of Missouri."

Section 15, of Article II of the Constitution of Missouri, prohibits the enactment of ex post facto laws, and laws which are retrospective in their operation. An ex post facto law is a law which is objectionable to penalties imposed, while the laws that are retrospective in their operation are laws applying to civil matters.

Under the facts set out in your request the contract for the lease with option to purchase, between the lessor and the lessee, was consummated before the effective date of the law, and before October 1941, at which time the salesman left the employ of the broker.

Under Section 15, of Article II of the Constitution of Missouri, *supra*, and also under Section 19 of Article XII of the Constitution of Missouri, the legislature cannot enact laws which are retrospective in their operation.

Section 19, of Article XII of the Constitution of Missouri, reads as follows:

"The General Assembly shall pass no law for the benefit of a railroad or other corporations, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State a new liability in respect to transactions or considerations already past."

Under this section the legislature cannot enact a law that would benefit the broker to the extent that he would not be liable to pay the commission due the salesman under his contract.

Section 15, of Article II and Section 19 of Article XII, of the Constitution of Missouri, were construed in the case of *Gast Realty & Investment Co. v. Schneider*, 246 S. W. 177, l. c. 178, where the court said:

"Article 2, Sec. 15. 'Ex Post Facto Laws, etc., Prohibited. - That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly.'

"Article 12, Sec. 19. 'Retrospective Laws in Aid of Corporations or Imposing New Liability on the People Forbidden. - The General Assembly shall pass no law for the benefit of a railroad or other corporations, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state a new liability in respect to transactions or considerations already past.'

"Sutherland speaks of retrospective statutes as those which 'relate to past acts and transactions,' and of retroactive statutes as those 'which operate on such acts and transactions and change their legal character or effect.' Lewis' Sutherland Statutory Construction (2d Ed.) Sec. 641.

"Sedgwick defines a retrospective law to be:

"'A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.' Sedgwick on Construction of Statutory Constitutional Law (3d Ed.) p. 160.

"This definition was adopted by this court in Hope Mutual Insurance Co. v. Flynn, 38 Mo. 483, 90 Am. Dec. 438, wherein Wagner, J., adds:

"'No new ground for the support of an existing action ought to be created by legislative enactment, nor any legal bar which goes to deprive a party of his defence.'"

Also, in the case of Barton County v. Walser, 47 Mo. 189, l. c. 200, the court said:

"A statute which takes away any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability,

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in respect to transactions already past, is retrospective. (Hope Mutual Ins. Co. v. Flynn, 38 Mo. 483.) * * *"

And, in the case of Murphy et al v. Limpp, 147 S. W. (2d) 420, 1, c. 423, the court said:

"There is no escape from the conclusion that respondent was taxed for the year 1937 because he had in his employ eight or more employees in the year 1936. Analogous to the situation would be a law enacted in 1937, taxing an individual because in 1936 he had had an income sufficient to come within the law but did not have a taxable income in 1937. Such a law would clearly be retrospective and void. See Graham Paper Co. v. Gehner et al., 332 Mo. 155, 59 S. W. 2d 49; Smith v. Dirckx, 283 Mo. 188, loc. cit. 197, 198, 223 S. W. 104, loc. cit. 106, 11 A. L. R. 510. In the latter case the court quoted with approval Mr. Justice Story's definition of a retrospective law as follows: 'Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already passed, must be deemed retrospective.' * * * *"

In the case of Home Telephone Co. v. Sarcoux Telephone Co., 236 Mo. 114, 1. c. 132, the court said:

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"* * * The amendment was subsequent to the contract, and therefore we should take the law in force at the date of the contract. Subsequent legislation cannot invalidate contracts lawful at the date of their making."

CONCLUSION

In view of the above authorities, it is the opinion of this department that a broker is liable to a former salesman for commissions agreed to on a contract consummated before January 1, 1942, even though at the present time the salesman is not now in the employ of the broker and is not a real estate salesman.

It is further the opinion of this department that a real estate broker would not be violating the real estate license act if he paid the salesman a part of the commission collected, although the salesman, at this time, has no real estate license.

APPROVED:

Respectfully submitted

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W. J. BURKE
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