REAL ESTATE COMMISSION: - Corporation loaning own funds is not required to obtain real estate license.

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Mr. J. W. Hobbs
Executive Secretary
Missouri Real Estate Commission
Jefferson City, Missouri

Dear Sir:

Your request for an opinion, as to whether or not the Industrial Bank and Trust Company of St. Louis, organized under the Laws of the State of Missouri, is required to have a real estate license, has been received.

The facts upon which we base our opinion read as follows:

> " * * Industrial Bank and Trust Company is a trust company organized under the laws of the State of Missouri. In the course of its business as a trust company, it lends its own funds upon security of real estate, taking deed of trust or mortgages. Upon occasion, such loans are sold by it to other institutions. Such sales are not negotiated or arranged in advance of the making of the loans. The loans are made by Industrial on its own behalf and not for others. Industrial does not hold itself out to the public as a licensed real estate broker or dealer."

Section 3 of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 425, partially reads as follows:

> "A real estate broker is any person, copartnership 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, rents 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. * * This act shall not apply to any person, copartnership, association or corporation who as owner or lessor performs any of the acts aforesaid, with reference to property owned or leased by them, nor to their employees in the regular course of the ownership and management of such property; * * *."

We presume the contention is over the sentence contained in the above partial section, which reads as follows:

> " * * * 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. * * * * * * * * * * * * *."

The main question is: What was the intention of the legislature in using the word, "or offers to negotiate a loan?"

The word "negotiate" is defined in the case of Carter v. Butler, 174 S. W. 399, l. c. 402, where the court said:

> " * * The word 'negotiate' is derived from the word 'negotiable' and when both words are used in connection with the same subject, they partake of the same meaning. Abbot, in his Law Dictionary, under the title 'negotiate,' defines it as follows:
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> "'To transfer under commercial law, an evidence of debt or an instrument for the payment of money, so that the holder's title is independent of any equities existing against the transferror - to transfer by indorsement.'
>
> "The learned author adds that 'negotiable' and 'negotiability' include this meaning only. Mr. Bouvier, in his dictionary, says that:
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> "'Negotiation, as used by writers on mercantile law, means the act by which a bill of exchange or promissory note is put in circulation, by being passed by one of the original parties to another person. Walker v. Ocean Bank, 19 Ind. 247.'"

This is termed a strict definition of the word negotiate.

In Lowrie v. Zunkel, 49 Mo. App. 153, 156, the court said:

> "'Negotiated,' when applied to a note, means more than indorsement merely, and includes delivery."

The above construction is to the effect that the word "negotiated," means the transfer, by endorsement, of a note.

In the case of Northrup v. Diggs, 106 S. W. 1123, 1125, 128 Mo. App. 217, the court held:

> "The word 'negotiate,' as used in a petition, which alleges that defendant authorized plaintiff to negotiate a sale of a lease for defendant, should be construed to mean conversation in arranging the terms of a contract."

The above definition defines the word "negotiate" as meaning an arrangement of the terms of a contract.

In the case of State ex rel. Carrollton School Dist. v. Gordon, 133 S. W. 44, 47, 231 Mo. 547, in quoting and adopting definitions in Webster's New Unabridged Dict. and Black's Law Dict., the court held:

> "'Negotiated,' in the usual technical and legal sense used by law-writers in speaking of commercial paper, means

> to transfer for a valuable consideration under rules of commercial law. The term is sometimes used as meaning to discuss or arrange for a sale or bargain, or the preliminaries of a business transaction; also, to sell or discount negotiable paper, or assign or transfer it by indorsement or delivery. The term as used in Rev. St. 1909, Sec. 1275, which provides that before a school bond shall be negotiated it shall first be presented to the State Auditor for registry, means the selling and putting in circulation by delivery in consummation of the sale.)" (Underscoring ours.)

In the case of State ex rel. Carrollton School Dist. No. 1, Tp. 53, R. 23, v. Gordon, 133 S. W. 44, 47, 231 Mo. 547, the court held:

> "Rev. St. 1909, Sec. 1275, provides that before any school bond 'shall obtain validity or be negotiated, such bond shall first be presented to the State Auditor, who shall register the same,' etc. Held, that the term 'obtain validity' meant to become clothed with validity as a present and subsisting obligation, and the term 'negotiated' meant that the bonds should have been sold and put in circulation by delivery in consummation of the sale; and officers of a school district, after

> bonds have been voted, may advertise for bids and accept a bid for bonds before they have been registered by the State Auditor; and hence such acts of the officers furnish no reason for refusing registration."

In the case of National Bank of Commerce of Lincoln v. Farmers' & Merchants' Bank, 128 N. W. 522, 523, 87 Neb. 841, the court held:

> "Under the provisions of the negotiable instruments law, Comp. St. 1909, c. 41, that every person negotiating an instrument by delivery warrants that it is genuine, and that he has good title, and article 3, sec. 30, of such law, providing that an instrument is negotiated when it is transferred to another so as to make the transferee the holder, the word 'negotiating' means putting into circulation by assignment of a claim, by indorsement, to dispose of by sale, and in 5 Words and Phrases, First Series, p. 4771, it is said: 'To "negotiate" means to conclude by a bargain, treaty, or agreement, to transfer, to sell; and the power to negotiate a bill or note is said to be the power to indorse and deliver it to another, so that the right of action shall also pass, and negotiation means the act by which a bill of exchange or note is put into circulation by being passed by one of the original parties to another person.'"

In the above case the court defined the word "negotiated," to be also the preliminary of a business transaction.

It is very noticeable that Section 3, supra, in describing a real estate broker, sets out first, one who actually loans money for others, and, second, one who offers to negotiate a loan. In other words, it was the intention in so framing the sentence to define a broker as one who actually loans money for others or offers to loan money for others where the loan is secured by real estate. It cannot be said that the word "negotiate" means the strict definition such as endorsing the note. The section does not say negotiating the "note", but says, "loans." Under the facts set out in the above statement, the Industrial loans its own money and in some cases sells the notes secured by real estate. As one who negotiates a note is not a broker, it would terminate in absurd results, for the reason that it would prevent the owner from negotiating his own note without first obtaining a broker's license.

In the case of State v. Irvine, 72 S. W. 2d 96, 335 Mo. 261, 93 A. L. R. 232, the court held that a statute will not be so construed as to require impossibilities, or lead to absurd results, if susceptible of reasonable interpretation. By reason of the clause in Section 3, which exempts from the Act a corporation which as an owner performs any of the acts prohibited, it was clearly the intention that "offer to negotiate loans secured by real estate" meant "for others."

In reading all of Section 3, supra, it clearly is shown that the intent and purpose of the whole Act was to protect the money and property of others from acts of agents and brokers, and the legislature was not interested in the way the owner handled their property or negotiated their own loans.

The legislative intent must be determined from the statute as a whole, and all of its provisions harmonized if reasonably possible, and particular words may be given a broader or a more restricted meaning than the dictionary definition, and, in extreme cases, words may be stricken out of the statute in order to harmonize it, since the reason of the law prevails over its letter. (State ex rel. Bess v. Schult, 143 S. W. 2d 486.)

Under the above holding the words "for others," might be interpreted to refer also to the offering to negotiate loans.

In construing an act, the true intention of the framers must be followed, and where necessary the strict letter of the act must yield to the manifest intent of the Legislature. (State ex rel. Webster Groves Sanitary Sewer Dist. v. Smith, 115 S. W. 2d 816, 342 Mo. 365.)

CONCLUSION

It is, therefore, the opinion of this department that the Industrial Bank and Trust Company is not required to obtain a real estate license, for the reason that it is the owner of the funds which are loaned upon security of real estate.

It is further the opinion of this department that it is not required to obtain a real estate license for selling its own loans which were made with its own funds.

Respectfully submitted

APPROVED:

W. J. BURKE
Assistant Attorney General

ROY McKITTRICK
Attorney General of Missouri

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