

REAL ESTATE COMMISSION: Licensed broker and  
licensed attorney may act  
in dual capacity.

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January 27, 1943

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



Dear Sir:

We are in receipt of your request for an opinion,  
under date of January 25, 1943, which reads as follows:

"The Commission desires a ruling from your office on the following. A Kansas City Lawyer who is also a licensee of the Missouri Real Estate Commission endeavored to sell a prospect a property owned by the Home Owners Loan Corporation, a Government Agency, and had he been successful in closing the deal he would have been paid a commission by the Government Corporation for his services however after submitting the clients offer to the Home Owners Loan Corporation the client changed their mind and wired the Home Owners Loan Corporation that they no longer desired to buy the property and withdrew their offer. The licensee who is also a lawyer had accepted a deposit on the sale, when asked by the client to return the deposit, returned part of it, and retained the balance stating he

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was keeping it as an attorney fee. The client has sent a sworn complaint to the Commission requesting the return of their deposit.

"Can the licensee act in the dual capacity of licensed real estate broker and a licensed attorney. The complainant states that they did not hire the licensee as an attorney and their transactions were purely one of prospect and real estate broker."

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

" \* \* \* This act shall not apply \* \* \* nor shall this act be construed to include in any way the service rendered by an attorney-at-law in the performance of his duties as such; \* \* \* \* \* ."

If the licensee described in your request was an attorney representing the Home Owners Loan Corporation, it would not be necessary that he should hold a salesman's or broker's license, as set out in the above partial quote.

Your main question is: Can the licensee act in the dual capacity of licensed real estate broker and a licensed attorney?

Since your request states that the Kansas City lawyer is a licensee of the Missouri Real Estate Commission, it can be presumed that he is qualified to act as a real estate salesman or broker. In reading the whole act we do not find any prohibition that would prevent an attorney's receiving a Missouri Real Estate Commission license.

The question as to whether a licensed real estate broker can act in a dual capacity depends entirely upon the facts in each case. The complainant, according to your request did not employ the attorney as an attorney-at-law, but as a prospect made an offer to buy real estate owned by the Home Owners Loan Corporation and made a down payment to the representative of that corporation who was either acting as an attorney, or real estate broker for the corporation. The facts in the request do not state in which capacity he is acting for the Home Owners Loan Corporation, but states that in case the real estate deal was consummated he would have received a commission from the Home Owners Loan Corporation.

If the offer was subject to the approval of the Home Owners Loan Corporation, and was withdrawn previous to the acceptance of the offer, the complainant would be entitled to all of the payment made as part payment to bind the bargain.

Under the facts it can be presumed that the Home Owners Loan Corporation recognized that the complainant was authorized to withdraw his offer, or it would not have authorized the Kansas City attorney to return any part of the deposit on the offer to buy. In your request you refer to the complainant as the "client of the attorney" and in the same request you also state that the complainant did not employ the licensee as an attorney.

We are assuming that the Kansas City attorney was not employed as a real estate broker by the complainant, or he would not have withheld part of the down payment as attorney's fees.

A real estate broker may represent both the buyer and the seller, providing the same is well known to each, and no fraud is committed by the broker. It was so held in Windsor v. International Life Insurance Company, 29 S. W. (2d) 1112, and Bopp v. Jetama Investment Company, 96 S. W. (2d) 877.

Since the complainant states that he did not employ the licensee as an attorney, it would be a question of fact to be decided in a proper litigation, but since the Kansas City attorney has returned part of the down payment and has retained part as an attorney fee, the question as to his authority to charge a commission is not involved.

It may be said that if the Kansas City Attorney was also attorney and real estate broker for the Home Owners Loan Corporation, he could also be attorney for the complainant in this case, providing he complied with the rules of the Supreme Court on such matter. The rules on such matters are contained in Section 6 of the Supreme Court Rules, which partially reads as follows:

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given

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after a full disclosure of the facts. Within the meaning of this section, a lawyer represents conflicting interests, when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

Under the facts in your request, the complainant knew that the Kansas City attorney represented the Home Owners Loan Corporation in one of the two capacities. As to any action by the complainant against the Kansas City attorney, it would be a question of fact for a jury to decide whether the attorney was employed by the complainant in the real estate transaction consisting of an offer to buy.

However, your main question seems to be whether a licensed real estate broker and a licensed attorney can act in a dual capacity.

CONCLUSION

In view of the above authorities, it is the opinion of this department, that a licensee under the Missouri Real Estate Commission Act may act as a licensed real estate broker and a licensed attorney, in a dual capacity, with the knowledge of the buyer and seller, where no fraud has been perpetrated.

APPROVED:

Respectfully submitted

W. J. BURKE

Assistant Attorney General

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ROY McKITTRICK  
Attorney General of Missouri

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