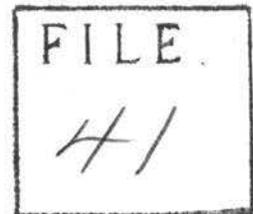


MISSOURI REAL ESTATE COMMISSION: The date of the conviction
REVOCATION OF LICENSE: fixes the jurisdiction of
the Commission in revoca-
tion of license. Using the
mails to defraud in connec-
tion with S.E.C. regulations
comes within the provisions
of Section 14 of the Missouri
Real Estate Act relative to
revocation of licenses.

October 11, 1944

Mr. John W. Hobbs, Secretary
Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri



Dear Mr. Hobbs:

This is to acknowledge receipt of your letter of
September 16th, 1944, in which you request the opinion
of this department. Your letter is as follows:

"May the Missouri Real Estate Commission
request an opinion from your office on
the following:

"The Midwest Realty Company, a corporation
of St. Louis, Missouri has filed an appli-
cation with this Commission for a corpora-
tion license and the active officers were
the officers of the Lichtenstein Estate
Inc. who were before the U. S. Federal
Court in St. Louis and were fined for
using the mails to defraud and violation
of the S.C.C. regulations.

"1. If the Federal Court procedure was
previous to the Missouri Real Estate
License Law becoming effective which date
was January 1, 1942 could the courts'
findings be used against the Midwest
Realty Corporation and its members.

"2. Whether the act which was using the mails to defraud and violating the S.C.C. regulations, could be classed with criminal acts and others as set out in Section 14 of the Law creating the Missouri Real Estate Commission."

In this opinion we are not passing on the application of the Midwest Realty Company, a corporation of St. Louis, Missouri, for a license under the Missouri Real Estate Act, and are merely answering the questions propounded in your letter.

Replying, therefore, to your first question, we refer to Section 14 of the Missouri Real Estate Act, found at page 430, Laws of Missouri, 1941, which provides:

"Where during the term of any license issued by the commission the licensee shall be convicted in a court of competent jurisdiction in the state of Missouri or any state (including federal courts) of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a duly certified or exemplified copy of the record in such proceedings shall be filed with the commission, the commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted. No license shall be issued by the commission to any person known by it to have been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses, or association or copartnership of which such person is a member, or to any association or copartnership of which such person is an officer, or in which as a stockholder such person had or exercises a controlling interest either directly or indirectly."

Section 1, of the Missouri Real Estate Act, page 425, Laws of Missouri, 1941, provided that the Missouri Real Estate Act should become effective after January 1, 1942.

It will be observed that under Section 14, supra, a conviction in a court of competent jurisdiction in the State of Missouri, including the federal courts, of certain designated offenses makes it mandatory on the Commission to revoke a license, upon the filing of a duly certified or exemplified copy of the record of such proceedings with the Commission, where during the term of the license issued by the Commission the licensee shall be convicted. The statute fixes the date as of the date of the conviction and not when the crime was actually committed. So, if any licensed person should be convicted during the term of the license the Real Estate Commission would have jurisdiction of the matter.

Referring to your second question, we refer again to Section 14, supra, of the Act, where it will be noted that convictions of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses are the crimes for which a license shall be revoked, upon filing a duly certified or exemplified copy of the record in such proceedings with the Commission.

We think that using the mails to defraud under the Federal statute would be an offense which would come within the purview of said Section 14. It would seem that the Act made it mandatory on the Commission to revoke the licenses of those who had been convicted of offenses involving money transactions or transactions involving property, and those crimes which would likely come within the business of a real estate dealer. And, applying the rule of eiusdem generis, it is our opinion that other like offense or offenses would include using the mails to defraud and come within the terms of Section 14. Also, we think using the mails to defraud would be included under the offense of obtaining money under false pretenses. In the very recent case of *Neibling v. Terry*, 177 S. W. (2d) 502, where the disbarment of an attorney was involved, the court said, at l. c. 503, that the offense of using the mails to defraud involves moral turpitude, citing cases from other jurisdictions.

We have previously ruled to your Commission that a plea of nolo contendere in the Federal Court of certain crimes is a conviction within the meaning of the Missouri Real Estate Act. And, the Circuit Court of Cole County, in the case of Meyer v. Missouri Real Estate Commission, sustained our construction of this statute. However, this case has been appealed by the plaintiff and was argued in the Kansas City Court of Appeals on October 6th, 1944. The opinion has not been handed down, and, it would seem advisable to await the decision of this case in the Court of Appeals on the question of whether a plea of nolo contendere is a conviction within the meaning of the Act.

CONCLUSION

Therefore, it is our opinion that (1) the date of the conviction in the court and not the date of the crime fixes the time when the Commission takes jurisdiction for the purpose of revocation of a license; and, that (2) using the mails to defraud, in connection with the violation of the S.E.C. regulations, comes within the purview of Section 14, of the Missouri Real Estate Act, that is, comes within the designated crimes of obtaining money under false pretenses, criminal conspiracy to defraud, or other like offense or offenses.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney General

CRH:CP

APPROVED:

VANE C. THURLO
(Acting) Attorney General