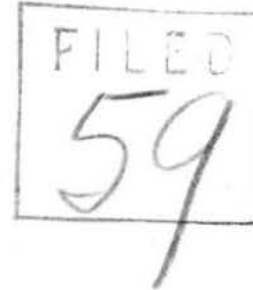


BUILDING AND LOAN: Interpretation of the word "salesman" --  
Who deemed to be "salesmen."

9-17

September 10, 1935.

Hon. Ira A. McBride  
Supervisor  
Bureau of Building and Loan Supervision  
Jefferson City, Missouri



Dear Mr. McBride:

This is to acknowledge your letter concerning the interpretation of Section 5628a, paragraph "d", Laws of Missouri, 1935, page 195, relating to the word "salesman." Your letter, in part, reads as follows:

"This is to ask your opinion as to just who is classified as salesmen and who is exempt under the provisions of this act from having to comply with this statute in the matter of being licensed by this department as a salesman."

Preceding answer to your inquiry, we desire to invite your attention to certain fundamental and cardinal rules to be followed in the interpretation of statutes.

In State ex rel. v. St. Louis-San Francisco Ry. Co., 300 S. W. 274, the Supreme Court of Missouri, en banc, page 277, said:

"A construction should never be given to a statute or a constitutional provision which would work such confusion and mischief, unless no other reasonable construction is possible."

In *Hannibal Trust Co. v. Elzea et al.*, 286 S. W. 371, the Supreme Court of Missouri, page 377, said the following:

"While the fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature, such intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, otherwise they would be assuming legislative authority. 36 Cyc. 1106. As said by this court, in Banc, in *Grier v. Railway Co.*, 286 Mo. loc. cit. 534, 228 S. W. 457:

'The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used. All other rules are incidental and more aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. In such case there is no room for construction.'

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"Another cardinal rule in the construction of statutes is that effect must be given, if possible, to every word, clause, and sentence. 36 Cyc. 1128. That rule has been frequently recognized and followed by this court. (Cases cited).

"Again, in the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. 36 Cyc. 1114."

Bearing in mind the above rules in construing statutes, we proceed to your question.

In Laws of Missouri, 1935, page 195, is found an Act to regulate "sales of and dealings in building and loan securities." Section 5628a defines certain terms used in the act, and paragraph "(d)" (the part under consideration) defines the word "salesman" as follows:

"'Salesman' shall include every natural person who, in this state, whether on his own account or as an agent, directly or indirectly and by whatsoever means, solicits or attempts to solicit or aids in soliciting or attempting to solicit any application or subscription for or sells or attempts to sell or aids in selling or attempting to sell any building and loan security prior to or under circumstances which in the ordinary or usual course of dealing would involve the issuance thereof: Provided, however, that no officer or employee of any building and loan association shall be deemed a salesman by reason of performing, in the line of his duty as such officer or agent, any routine or clerical act or acts incident to the issuance by such association of any such security or its employment, in behalf of and in the name of itself or any salesman registered in the manner hereinafter prescribed in this act, of any advertising medium calculated or intended to induce applications or subscriptions for such securities."

There is no question but that the Legislature in the exercise of the police powers of the State has provided that no one shall solicit or attempt to solicit, or sell or attempt to sell "building and loan securities," as defined in the act, unless licensed. While the definition of the word "salesman" seems to be harsh and all inclusive, yet, when read in conjunction with the exceptions we believe that it was the intention

of the Legislature to only cause those persons to be licensed who solicit or attempt to solicit, directly or indirectly, or sells or attempts to sell, or aids in selling building and loan securities under circumstances which in the usual or ordinary course of dealing would cause one to purchase said securities or involve the issuance thereof.

We believe that the word "solicit" as found in said definition determines the legislative intent. We are further of the belief that the word "solicit" should be given a similar interpretation as that given it by the Supreme Court of Washington. We quote from Words and Phrases, 3d Series, Vol. 7, page 40:

"Under a municipal ordinance prohibiting taxicab drivers from soliciting business from passengers at certain times and on certain premises, 'soliciting' is to ask for or to seek to obtain the right and privilege of passengers to transfer such passengers or their baggage for hire by actual persuasion or persistent entreaty, and the mere presence of such drivers, whether in uniform or not, and whether or not accompanied by a vehicle, is not 'soliciting,' within the ordinance. *Seattle Taxicab & Transfer Co. v. City of Seattle*, 150 P. 1134, 1137, 86 Wash. 594."

Who is, and who is not classified as a "salesman" under the act, would depend entirely upon the facts, and we take the means of answering your question, as to how salesmen should be classified, by a few illustrations:

(1) If John Doe is employed by a building and loan association, and whose duties consist of interviewing people for the purpose of selling them "building and loan securities," then said person would have to be licensed.

(2) If a person, after reading literature or advertisements of a building and loan association, decides to make further inquiry concerning "securities" of said association

and calls at the office of the association and interviews an employe, and through the efforts of the employe said person purchases "securities," then, in our opinion, that employe should be licensed. However, if a person voluntarily applies to a building and loan association and with his mind fully made up to purchase "securities" and so informs an employe of the association of his intention, and the employe merely issues the "securities" to him, then, in our opinion, said employe need not be licensed.

(3) Assume that the president of a building and loan association is playing a game of golf with a person and said person, during the course of the game, would inquire of the president concerning "securities" of the building and loan association of which he was president, and the president would give him the information requested, it would be our opinion that such isolated case would not constitute the president a "salesman" because such would not be, "under circumstances which in the ordinary or usual course of dealing would involve the issuance thereof." However, if the president actively solicited other persons and told them about the "securities," then such person (president) would in our opinion have to be licensed.

From the above it is thus seen that it is difficult to draw the line of demarcation in classifying "salesmen." However, we hope the above illustrations will be of assistance and a guide for you in determining the facts in each individual case as to whether or not a license is required. We believe that you would be within your rights to require every association that has building and loan "securities" for sale to have at least one of its employes licensed. In other words, the employe of a building and loan association, whose duty it is to confer with persons seeking to purchase its stock, should be licensed.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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(Acting) Attorney General