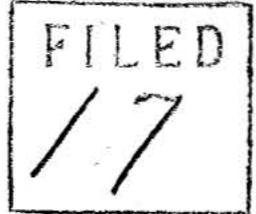


REAL ESTATE BROKERS: A person who is not engaged in the real estate business, who does not advertise or hold himself out as a real estate broker, and who, in a single transaction obtains a buyer of real estate for another for a promised compensation, is not a real estate broker within the meaning of the Missouri Real Estate Commission Act.

December 4, 1947



Honorable James D. Clemens
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Sir:

We have received your letter of Nov. 20, 1947, which is as follows:

"The opinion of your office is requested in the following matter:

"A local resident who is a farmer and trader is not licensed as a real estate broker or salesman as provided by Sections 8300.1-.18. This man has assisted a woman in the sale of her farm, and now claims that she agreed verbally to pay him a 5% commission for the sale of the farm. The woman had written the trader saying that she would appreciate anything he could do for her in finding a buyer. The woman is old and in poor health, the trader is aggressive and is threatening suit against the woman for a commission.

"Section 8300.17 provides a penalty for a violation for the other parts of the Section, but a question arises as to whether the trader's actions are in violation of the law. Section 8300.3 defines a broker or salesman as one who offers to buy or sell the real estate of others, but that section in its last clause excludes any person who does not hold himself out to the public as a real estate dealer, and who might, occasionally, offer to sell real estate. Your opinion is requested as to whether 8300.3 applies to the facts outlined."

Section 1 of the act creating the Missouri Real Estate Commission (Laws of 1941, page 424, Section 8300.1, Mo. R.S.A.) provides that:

"* * * 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."

Section 3 of the act, as amended (Laws of 1945, page 1421), defines a real estate broker as a person who "advertises, claims to be or holds himself out to the public as a real estate broker or dealer and who for a compensation or valuable consideration, as whole or partial vocation, sells or offers for sale, buys or offers to buy, exchanges or offers to exchange the real estate of others; * * * nor shall this act apply to any person who does not advertise or hold himself out to the public as a real estate broker or dealer and who might, occasionally, buy or offer to buy, or sell or offer to sell, or rent or lease or offer to rent or lease any real estate, or to loan or offer to loan money secured by real estate."

Section 16 of the act provides that no person "engaged in the business or acting in the capacity of a real estate broker" may maintain an action for the recovery of compensation for services rendered in buying or selling real estate without alleging that he was a licensed real estate broker or salesman at the time the cause of action arose.

Section 17 of the act provides that violation of any provision of the act shall be a misdemeanor.

There are no reported cases covering the applicability of the statute to the situation which you have presented. However, the statute does expressly exempt from its provisions a person who does not "advertise or hold himself out to the public as a real estate broker or salesman and who might, occasionally, buy or offer to buy, or sell or offer to sell real estate." The act does include persons who act in such capacity "as whole or partial vocation," but this provision must be considered in connection with the exception of the person who negotiates an occasional transaction, otherwise the occasional transaction exemption would be meaningless.

In the situation which you present, the person who assisted in the transaction was requested to do so by the owner of the real estate. There is no indication in the information which you have presented that he held himself out to the public as a real estate dealer. You describe him as "a farmer and trader," but have not indicated that he has engaged in other real estate transactions similar to this, and for the purposes of this opinion, we have assumed that he has not. In the absence of such other transactions and of a holding of himself out to the public as a real estate dealer, this is, we feel, a situation to which the exemption of an occasional transaction was intended to apply.

The statutes in other jurisdictions covering the licensing of real estate brokers and salesmen differ considerably. None has been found with the identical language of the Missouri definition. However, as a general rule, even where there is no express exemption applicable to an occasional transaction, the courts have held that, in the absence of holding out or advertising as a real estate broker, a person who, for a promised compensation, finds a purchaser in a single transaction is not a broker within the meaning of the statute, and is not required to obtain a license. In the case of *Noll v. Mastrup*, 233 Ia. 1176, 11 N.W. (2d) 367, the court held that the Iowa statute does not include a farmer and dealer in livestock who, in an isolated transaction, procures a purchaser of real estate for another. To the same effect are the cases of *Young v. Kiuder*, 33 N.W. 654, 275 Pac. 98; *Sheppard v. Hulseberg*, 171 Ia. 659, 131 So. 840; *Schwartz v. Weiner*, 94 Colo. 251, 30 Pac. (2d) 1110. In some states the statute expressly provides that a single transaction shall constitute one a broker, and decisions under such statutes are not relevant here. *Verona v. Schenley Farms*, 312 Pa. 57, 167 Atl. 317; *Massie v. Dudley*, 173 Va. 42, 3 S.E. (2d) 176.

CONCLUSION

A person who is not engaged in the real estate business, who does not hold himself out as a real estate broker, and who, in a single transaction, obtains a buyer of real estate for another for a promised compensation is not a real estate broker within the meaning of the Missouri Real Estate Commission Act, and we are of the opinion that, in the situation which you have presented, the person who obtained the purchaser was not required to have a license as a real estate broker, and is not subject to prosecution for failure to obtain such license.

Respectfully submitted,

APPROVED:

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