

MISSOURI REAL ESTATE COMMISSION: A previous conviction of arson
LICENSES: does not disqualify one from
obtaining a broker's license or
a real estate salesman's license.

November 6, 1947



Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri

Attention: Mr. John W. Hobbs, Secretary

Gentlemen:

This will acknowledge receipt of your request for an opinion which reads:

"This office requested an opinion from the Attorney General's Office in 1942 in regard to Section 14 of the Missouri Real Estate License Law pertaining to the revocation of a license when an applicant or a licensee has been convicted of forgery, embezzlement, extortion and other like offenses.

"The opinion this office received was that the Commission deny licenses to applicants having been convicted and revoke the licenses of the licensees under the same circumstances.

"An applicant has requested this office to again request an opinion from your office with the following statement as to his conviction. In 1934 the applicant was convicted of a crime of arson (two charges) and sentenced to imprisonment in jail for a term of two years.

"The applicant contends that the offense should not be considered a like offense of the various offenses set out in the License Law. May this Commission request an opinion from your office on this matter."

Your request requires a construction of Section 14, page 430, Laws of Missouri, 1941, of what is known as the Real Estate Act of the State of Missouri. This provision requires

the Real Estate Commission to revoke a license of any licensee upon conviction in any court in this state or federal court of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offenses, and further provides that said Commission shall not issue any license to any person having been convicted of such crimes or other like offenses. Section 14, supra, reads:

"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 co-partnership 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."

The applicant in the instant case has been convicted of the crime of arson, back in 1934. Arson was not specifically mentioned in the Real Estate Act as an offense, the conviction of which would disqualify an applicant for obtaining a license. The question now to be determined, is arson one of the offenses referred to in Section 14 that comes within "other like offenses." There is a well established rule of statutory construction, known as the "ejusdem generis" rule, which is that wherein a statute general words follow particular words, the general words will be considered as applicable only to persons or things of the same general character or class, and can not include wholly different things. See *Zinn vs. City of Steelville*, 173 S.W. (2d) 398, 351 Mo. 431. However, that rule

need not be invoked in this instance because by the very wording of the statute in question, the Legislature in unambiguous terms clearly indicated its intent that other offenses shall be like those enumerated.

We must not lose sight of the fact that the Real Estate Act is not a revenue measure but is a regulatory measure. It was enacted to require real estate brokers and real estate salesmen to be honest, truthful and of good reputation. In *Anderson vs. Johnson*, 167 A.L.R. 768, 160 P. (2d) 725, the court in construing the Real Estate Act of the State of Utah, which is very similar to that of Missouri, said:

"It is apparent that the statutes were enacted, not to provide revenue, but to provide for registration and regulation of those engaged in the real estate business. The license fee is so nominal that no other conclusion is tenable. In *Koeberle v. Hotchkiss*, 8 Cal App 2d 634, 48 P 2d 104, 107, Justice Crail stated: 'The primary purpose of the Real Estate Brokers' Act was to require real estate brokers and salesmen to be "honest, truthful and of good reputation."'

"By its inherent nature, real estate business requires confidence in and honesty of those delegated with authority to list, rent, supervise or sell real estate belonging to others. Public criticism of real estate rackets and unscrupulous and unworthy brokers and agents has caused the respectable and reliable real estate brokers and salesmen, throughout the land, to promote and demand legislative supervision and regulation of those engaged in this business. A casual examination of the codes of the states discloses that many have enacted Real Estate Brokers' laws which are similar to those of Utah. While the statutes of the different states vary in some details, yet in general provisions and purposes they are very much alike. Practically all the laws have been enacted, not for revenue, but for supervision and regulation. * * * "

It is not likely that when the Real Estate Act of Missouri was passed that the framers of said act intended for the phrase "other like offenses," as used in Section 14 thereof, to include the crime of arson, unless it would be for having been convicted of arson as defined in Sections 4431 and 4432, R. S. Mo. 1939. Under those provisions, the defendant, in order to be convicted, must have committed the crime with intent to injure or defraud someone, and they read as follows:

"Sec. 4431. Any person who shall willfully set fire to, burn or cause to be burned any house, building, barn, stable, boat, vessel or any office or depot, railroad car, any house of public worship, college, academy, schoolhouse or building used as such or any public buildings belonging to the United States or of this state, or to any county, state, town or village not mentioned in the preceding sections, or any barrack, cock, rack, stack of hay, corn, wheat, oats, barley or any grain or vegetable produce of any kind, or any field of standing hay or grain of any kind, or any pile of coal, wood or other fuel or any pile of planks, boards, posts, rails or lumber, or any street car, railroad car, ship, boat or other water craft, automobile or motor vehicle or any goods, wares or merchandise or any other property not specifically named herein and being the property of another; and, any person who shall willfully set fire to, burn or cause to be burned any of the buildings or property of the kind and character above mentioned in this section and of which said property he is the owner or of which he owns an interest therein, with the intent to injure or destroy any other property, or with the intent to injure or defraud any person, co-partnership or corporation, government, state, county, city, school district or municipality, shall be deemed guilty of a felony and upon conviction therefor shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years."

"Sec. 4432. Any person who shall willfully and with the intent to injure or defraud the insurer set fire to, burn or cause to be burned any goods, wares, merchandise or other chattels or personal property of any kind which shall at the time be insured by any person, persons, co-partnership or corporation against loss or damage by fire shall be deemed guilty of a felony and upon conviction therefor be punished by imprisonment in the penitentiary for not less than two nor more than five years."

We make the foregoing assertion because all of the offenses specifically mentioned in Section 14, supra, that disqualify a person from obtaining a real estate license or real estate salesman's license, or that are grounds for the revocation of such licenses, deal primarily with misrepresentations, dishonesty or shady dealings. In all probability, when the Legislature passed Section 14, supra, they specifically named all the objectionable crimes and included the words "other like offenses" as an afterthought or safeguard in case there might be some similar offense they had overlooked.

CONCLUSION

Therefore, it is the opinion of this department that a previous conviction of arson, unless the conviction was had under Section 4431 or Section 4432, R. S. Mo. 1939, will not of itself prevent a person so convicted from applying and receiving a license as a real estate broker or real estate salesman; neither is it sufficient grounds to revoke such licenses.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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