The above bonds are given in pursuance to the provisions of Section 1182 of the General Code, which section specifically requires that resident deputy directors shall give bond in the amount above indicated with sureties to your approval. The bonds have been properly executed and bear your approval thereon.

It is further noted that in the official roster of the Division of Insurance all of the sureties heretofore mentioned have been duly authorized to transact business in Ohio.

In view of the foregoing, I have approved said bonds as to form and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

256.

FOREIGN REAL ESTATE—SPECIFIC ACTIVITIES OF TOURS COMPANY CONSTITUTE DEALING IN SUCH PROPERTY UNDER SECTION 6373-15, GENERAL CODE—LICENSE NECESSARY.

SYLLABUS:

When solicitation is made in the State of Ohio of individuals to make a tour outside of the State of Ohio at a cost to the tourist of less than the actual cost necessary for such tour, when such deficiency is made up by a land selling company out of commissions or profits from the sale of real estate to tourists, and the apparent and sole object of conducting the tour is to sell the real estate of such land selling company, such solicitation constitutes dealing in real estate not located in Ohio within the meaning of Section 6373-15, *General Code, and such solicitors should be licensed so to do as therein provided.*

COLUMBUS, OHIO, April 3, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which is as follows:

"At the present time there are a number of 'tours' companies operating excursions into the Rio Grande Valley, Texas, for the purpose of disposing of Texas real estate to residents in Ohio. The Division of Securities has investigated a number of these companies and in no case has it been found that a tour's agent suggested in this state the purchase of real estate. Apparently there is no solicitation nor sale in Ohio and a question has arisen as to whether or not the activities of these tours companies is in violation of Section 6373-15 of the General Code of Ohio.

In order to more clearly place before you the question as to which I seek your opinion I state the following case:

The A Tours Company, not a licensed dealer in Ohio, solicits the people in Ohio to make a tour of the Rio Grande Valley, Texas, and as an inducement to the people in Ohio to make such tour, the A Tours Company offers a round trip railroad ticket and all expenses incurred during the trip at a greatly reduced rate.

The A Tours Company does not pay for the aforesaid round trip railroad ticket nor the expenses referred to, both the ticket and expenses being paid for by the land company in the Rio Grande Valley, Texas, for whom or with whom the A Tours Company acts as agent, or associate.

The purpose of these tours is to assist the land companies in the Rio Grande Valley, Texas, to sell their Texas land to Ohio people.

The A Tours Company remains in business as such only as long as their patrons purchase Texas land, since the tour itself is conducted at a financial loss, and the only profit made by the A Tours Company in the operation of these tours is that received as a commission on the purchase of land in Texas by the Ohio tourists, the amount of said commission being determined by the oral or written agreement between the A Tours Company and its principal or associate Texas Land Company.

Will you please advise whether the operation of the A Tours Company is in violation of Section 6373-15 of the General Code of Ohio in that it constitutes dealing in foreign real estate without having first procured a license from the Division of Securities?"

The sole question which you present is whether or not the tours company operating in Ohio under the procedure set forth in your letter is within this state dealing in Texas real estate as contemplated in Section 6373-15, General Code.

This section, in so far as pertinent, is as follows:

"No person or company, unless licensed in the manner and under the conditions applicable thereto hereinbefore provided for dealers, shall, within this state deal in real estate not located in Ohio of which he is not the actual and bona fide owner, * * . "

As set forth in your letter, in the case presented, there are no sales made in Ohio nor is there apparently any direct solicitation or offer of the real estate made in the State of Ohio. The first consideration, therefore, is whether or not dealing in real estate contemplates anything more than buying and selling or offering for sale. This office has held that dealing in real estate as used in Section 6373-15, is subject to a broader construction than the mere buying and selling or offering for sale of real estate. In the year 1919, in an opinion of the then Attorney General, consideration was had of a situation whereby a foreign corporation was engaged in the business of making contracts with persons in Ohio to procure and validate for them the title to United States government lands located outside of Ohio for a consideration. It was held that such transactions constituted dealing in real estate within the meaning of this section. Opinions of the Attorney General, 1919, Vol. II, p. 1322.

Section 6373-15, referring to the manner and conditions applicable to the licensing of dealers has reference to Section 6373-3, General Code. While there appears no definition for the word "deal," the term "dealer" is defined in Section 6373-2, General Code, as follows:

"The term 'dealer,' as used in this act, shall be deemed to include any person or company, except national banks, disposing, or offering to dispose of, any such security, through agents *or otherwise,* and any company engaged in the marketing or flotation of its own securities either directly or through agents or underwriters *or any stock promotion scheme whatsoever.* * * * * * . " (Italics the writer's.)

The qualification of foreign real estate and the licensing of dealers in foreign real estate are the same as are required for the licensing of dealers in securities and the qualification of securities. It appears, therefore, that since foreign real estate and dealers in foreign real estate, are classified in the same category as stock and dealers in stock, the term "dealer" as defined in the securities law to include "any stock promotion scheme whatsoever," might also be said to include any foreign real estate promotion scheme whatsoever.

The authorities defining the word "deal," "dealer" and "dealing in" are exceedingly numerous. "Deal" is defined in 17 Corpus Juris, 1153, when used as a verb (as in the case of its use in Section 6373-15), as follows:

> "To transact business, to trade, to trade in the selling of a thing, or to make a business of it; to traffic; to traffic in; *to act between two persons; to intervene; to have to do with.*" (Italics the writer's.)

A consideration of only a few citations defining the word "deal" as a verb and also as a noun is illustrative of the comprehensive scope of the term as interpreted by the courts.

> "To act as an intermediary in business or any affairs; to manage; to make arrangements; to negotiate. To traffic, to trade, to do business. To attain a desired result by a combination of interested parties."
> —Webster's New International Dictionary.

> " 'Deal' means an arrangement to attain a desired end, also an act of buying and selling; a bargain."
> —*Oregon Home Builders* vs. *Montgomery Inv. Co.,* 94 Or. 349, 184 Pac. 487.

> " 'Deal' is a combination of interested persons to attain a certain result, the prime object being usually a purchase, sale, or exchange of such property for profit." —*Chambers* vs. *Johnston,* 180 Ky. 73.

> "The word 'dealer' generally applies to one who buys and sells—a trader. But where a municipal ordinance declares that 'any merchant, billiard table or ten-pin alley keeper, or other dealer, who shall keep open doors on the Sabbath Day,' shall be subject to a punishment prescribed, the word 'dealer' is to be construed in connection with the words preceding it. So construed, it would include one who operated a 'penny arcade' or place where a number of machines were kept for profit, each of which, by a mechanical arrangement, exhibited pictures to a person who dropped a penny into a slot."
> —*Fitchtenberg* vs. *Atlanta,* 126 Ga. 62; 54 S. E. 933.

In the case of *Horseley* vs. *Woodley,* 12 Ga. App. 456, the first branch of the syllabus is as follows:

> " * * * One is a real estate dealer who, on his own account, and as a business independent of that of another real estate agent, engages for a consideration to aid others—whether the owners of the property or their agents—in selling real estate which is offered for sale."

If the term "dealer" were to be construed as applicable only to the buying and selling of real estate, under the facts presented, it appearing that sales are only made outside of Ohio and that no property is offered in Ohio, such solicitors would not be

required to be licensed under the ruling of *People ex. rel.* vs. *Hilltop Metals Co.*, 300 Ill. 564, 133 N. E. 303. The facts in this case disclose that a person in Chicago desiring to purchase stock in an Arizona corporation, signed an application therefor in the form of a letter, which was furnished to him by the company's agent in Chicago, and the agent took his money and deposited it in his personal account and sent his personal check with the purchase application to the company's office in Missouri, who accepted the application there and sent the purchaser a stock certificate from there by mail. It was held that such sale was made in Missouri. It is noted, however, that this action was predicated upon a statute prohibiting the *sale* of the securities in question in the State of Illinois. By the very definition of the word "dealer" as contained in the securities act, Section 6373-2, supra, there appears no authority for such a limited construction herein.

While the section under consideration is a penal section and must, therefore, be construed strictly, nevertheless the language used must be defined in the light of judicial authority. Undoubtedly, if the tours company were actually what its name implied and engaged in the business of conducting tours such as Thomas Cook and Sons and other well-known organizations, the mere fact that tourists purchased real estate or any other commodity would certainly not, in any way, place such tours company within the definition of a dealer in foreign real estate as found in the securities act. In this case, however, it appears from the facts submitted that, irrespective of any question of agency, the tours company in question is not conducting tours independently and at a profit, but only as an incident to the business of selling real estate in the Rio Grande Valley. There are no tours apparently conducted to any other place in the United States. The tours are conducted at a financial loss to the tours company, which loss is made up by the land selling company. Whether this loss is reimbursed out of commissions from lands sold to tourists in Texas or whether it is paid by the land selling company without any reference to the sales made on a particular tour and charged to advertising can have no bearing upon the situation whatsoever. The fact remains that the tours company, in its operations in Ohio, is but a part of the one business of selling Texas realty. The very purpose of Section 6373-15 is to prevent fraud in the sale of real estate located out of the state, and, with that end in view, it requires, with certain exceptions therein contained, all persons and companies to secure a license from the State of Ohio before dealing in, selling or offering for sale in Ohio of such real estate. To hold that this tours company is not dealing in real estate and that its solicitors should not be licensed would, in my opinion, defeat the very purpose of the act. Under such a construction, if the promotion scheme were sufficiently profitable, there would be nothing to prevent the tours company from coming into Ohio and conducting free tours or even paying prospective purchasers to go to the place where the property is for sale, without being licensed as provided in the act.

I am not unmindful of the distinction throughout the act between real estate and securities. There are no requirements in the securities law for qualifying Ohio real estate as in the case of real estate located outside of Ohio. The basic theory of all so-called Blue Sky legislation is that on account of the difficulty in determining from the inspection of a stock certificate or a prospectus of a new enterprise, pertinent facts surrounding such security, the state should supply some measure whereby the investing public is protected from misrepresentation and non-representation of pertinent facts bearing upon such offering. Upon this theory and because real estate is a tangible thing differing from a stock certificate or bond, the failure of the Legislature to place Ohio real estate upon the same basis as stocks is unquestionably on the theory that Ohio investors may, with relative inconvenience, see Ohio real estate before buying and would, in fact, inspect such real estate in most instances. Furthermore, the legislation requiring the qualification of non-Ohio real estate is unques-

tionably upon the theory that, in most instances, because of its distance from the investor, an inspection may be impractical, and, therefore, in order to protect the public from possible misrepresentation of lands offered which are not seen, the Securities Division should first make an inspection and pass upon the integrity of the foreign land promoters and the accuracy of the representations proposed to be made in Ohio before an offering is made. It may be said that in the case presented, the underlying purpose of the securities law is fulfilled in that prospective buyers are taken to look at the land sought to be sold. Conversely, the Legislature may consider that residents of Ohio are generally familiar with extraneous conditions surrounding the Ohio real estate market, but that such facts as pertain to real estate outside of Ohio are not generally known, and therefore, an examination of foreign real estate should be made by a representative of the securities department before the offering is made. Such examination should go much further than a mere visual inspection of the property. In any event, however, any consideration of underlying purposes of a law cannot go so far as to abrogate a construction of language used by the Legislature in accordance with well-established judicial interpretation.

The view that the words "deal in," as used in the section under consideration, must be comprehensively interpreted is substantiated elsewhere in this section. Among the exceptions contained therein as being transactions to which the section shall not apply, it is expressly provided that the section shall not be deemed to prohibit "a railroad company having an immigration bureau or department from advertising either directly or through its accredited representatives, the fact that there are along its route lands for colonization or sale; provided that such advertising be not of specific tracts of real estate, and not for the purpose of avoiding the provisions of this act." The Legislature was not, apparently, unmindful of the conduct of tours and the development of new territory and has here specifically exempted certain advertising.

The securities law clearly contemplates that foreign real estate dealers should be licensed, and upon compliance with the provisions of the securities law applicable thereto, there should be no occasion to resort to any subterfuge whereby it is necessary to take citizens out of the state in order to consummate a sale. The provisions for licensing foreign real estate dealers and qualifying foreign real estate for sale in Ohio are not arbitrary as contained in these sections of the securities law. The law itself does not prohibit Ohio investors from purchasing non-Ohio real estate, neither does it make it necessary for citizens of Ohio to go outside of the state so to do.

A very careful consideration of the authorities cited herein and of the manifest intention of the Legislature as expressed in the words used, leads me to the conclusion that when solicitation is made in the State of Ohio of individuals to make a tour outside of the State of Ohio at a cost to the tourist of less than the actual cost necessary for such tour, when such deficiency is made up by a land selling company out of commissions or profits from the sale of real estate to tourists, and the apparent and sole object of conducting the tour is to sell the real estate of such land selling company, such solicitation constitutes dealing in real estate not located in Ohio within the meaning of Section 6373-15, General Code, and such solicitors should be licensed so to do as therein provided.

Respectfully,
GILBERT BETTMAN,
Attorney General.