

possession of property belonging to the people of the county. It follows that any citizen, as a beneficiary of the trust, has a right to inspect and make copies of such records at any reasonable time, subject only to the limitation that such inspection and copying shall not endanger the safety of the records, or interfere with the discharge of the auditor of his official duties in connection therewith. The right is not limited to taxpayers or to persons having a private interest to be served, and it seems that the question of motive is immaterial. It has been held that this right of inspection is not a political right, but a property right, and that it may be protected and enforced by mandatory injunction."

These preliminary estimates of valuation, and documents showing the valuations fixed by the auditor, are the records of the people of the county, prepared by their own public servants, at their own expense. They undoubtedly have the right to inspect their own property. The legislature has guaranteed that right by the enactment of Section 5591, *supra*.

It must, of course, be borne in mind that as in the case of any other public documents which are open to inspection of the public, reasonable rules may be adopted so that the safety of such documents may not be endangered, so that they may be open at reasonable hours, and so that there may be no undue interference with the performance of the duties of the public officials. The auditor has important duties to perform in connection with these records at this time. His rights and duties must be respected. The general public have rights as well. Each must act reasonably, and with proper regard for the rights and duties of the other.

In specific answer to your questions, therefore, it is my opinion that:

1. Preliminary data in the hands of the county auditor, including estimates of valuation, prior to the time of submission to the board of revision, is open for public inspection.

2. After the county auditor has fixed a definite valuation on personal property, the documents showing such valuation are open for public inspection, notwithstanding the fact that the entire assessment roll may not be made up for the board of revision.

3. The opening of such estimates for public inspection prior to submission to the board of revision by the county auditor, does not constitute a violation of Section 12924-7, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3704.

STATE BOARD OF REAL ESTATE EXAMINERS—MAY REVOKE
LICENSE OF REAL ESTATE BROKER FOR FAILURE TO REMIT
DEPOSIT UNDER A DEFECTIVE LEASE.

SYLLABUS:

The State Board of Real Estate Examiners has authority, by virtue of section 6373-42, subsection 5, General Code, to suspend or revoke a license of any real estate broker who fails or refuses to remit money deposited with said broker as

security for rent under a lease which the broker had no authority to make in his own name as lessor.

COLUMBUS, OHIO, October 26, 1931.

State Board of Real Estate Examiners, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter which reads as follows:

“The Board of Real Estate Examiners requests your opinion on the following:

The owner executed to broker the following letter of authority in writing: .

‘Gentlemen:

This is your authority to take charge of and manage my property at 5821 Detroit Ave.

You will rent same upon the best terms available, or you will sell or exchange the same for me upon the best terms obtainable.

Signed by Owner.’

The broker entered into lease, but did not disclose that he was acting for owner. Lessee was led to believe that broker was owner of property.

Copy of lease is hereto attached. Broker was unable to deliver possession promptly to lessee at time stipulated in lease. The lessee learned that broker was not the owner of the property and repudiated the lease and demanded return of her money. The broker refused to return the \$420.00 paid him by lessee. The owner testified that she does not recall whether any of the \$420.00 was paid her. Broker refuses to return the money deposited with him by the lessee.

Under the foregoing statement of facts, has this Board authority to revoke or suspend the broker’s license?”

In your letter of October 5, 1931, you limit the above request for my opinion solely to the question of whether or not, under the facts, as stated in that letter, the State Board of Real Estate Examiners has authority to revoke or suspend the license of a real estate broker under the provisions of section 6373-42, subsection 5, General Code.

The indenture of lease submitted to me is in the name of the broker as lessor and begins with the usual words of demise and is followed by a description of the property, a statement of the duration of the term and the rentals to be paid, with provisions for the right of re-entry by the lessor in case of non-payment of rent by the lessee, and the usual provisions as to use and condition of the premises. The lease also provides for an option to purchase by the lessee from the lessor and a covenant of quiet enjoyment of the demised premises during the term of the lease. The lease was signed and acknowledged by both the lessor and lessee and duly witnessed. The lease provided for a deposit of \$420.00, one-half of which was to be payable as rent for the first three months of the life of the lease and the remaining \$210.00 to be held by the lessor as security for further payments of rent. There is nothing in the lease which would indicate that the lessor (the broker) was acting in behalf of or as agent of any person or persons.

It is a universal rule of law that no one can transfer the title to property belonging to another unless the owner of the property has clothed or granted such person with authority to do so. In Ohio such a power of authority must be executed and recorded in the same manner as that prescribed for the execution and recording of a deed, mortgage or lease. See sections 8512, 8513 and 8536, General Code. The so-called authority for the broker to sell or lease the premises in question does not comply with the requirements of sections 8512, 8513 and 8536. The lease submitted to me and executed by the broker, as lessor, clearly purports to be a lease made between broker, as the ostensible owner of the property, and the lessee, and not for or in behalf of the true owner of the property.

A lease has been defined "as a conveyance by the owner of an estate to another, of a portion of his interest therein for a term less than his own, usually in consideration of a stipulated rent to be paid by the grantee or lessee for the use and enjoyment of the premises and passes a present interest in the land for the period specified". Thompson on Real Property, Vol. II, page 104

The so-called written authority given the broker by the owner of the property was at the most only an authorization to secure either a purchaser, lessee or tenant for the property and could not and can not be considered as enabling the broker to convey, transfer or lease the property for a term exceeding three years to another for and on behalf of the true owner. Even if the written authority to the broker could be interpreted as granting to him the power to convey, transfer or lease the property for the owner, nevertheless, it could not permit him to enter into a lease in his own name without disclosing his principal. In other words, the lessee, on discovering that the broker was not the true owner of the property, had the right to refuse to proceed under the terms of the lease, and to repudiate such lease.

The deposit of the sum of \$420.00 made by the lessee with the broker, as required by the terms of the lease, was made solely in the anticipation that the lease was an enforceable one. Upon the discovery that the broker was not the true owner of the property and did not have authority to make the lease that he did, it would seem to me that the lessee would be entitled to the return of the \$420.00 on the repudiation of the lease.

Your inquiry raises the question of whether or not the State Board of Real Estate Examiners has jurisdiction to hear a complaint of this nature under the provisions of section 6373-42, subsection 5. Section 6373-42 reads in part as follows:

"The state board of real estate examiners may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the conduct of any licensee under this act, within this state, and may suspend, or revoke or refuse to renew any license at any time where the licensee, in performing or attempting to perform any of the acts mentioned in section 1 of this act, is guilty of:

* * * * *

(5) Failure within a reasonable time to account for or to remit any moneys coming into his possession which belong to others."

Section 6373-25 reads in part as follows:

"As used in this act:

'Real estate broker' means a person, firm or corporation who, for a commission, compensation or valuable consideration, sells, or offers

for sale, buys, or offers to buy, negotiates the purchase or sale or exchange of real estate, or leases, or offers to lease, rents, or offers for rent, any real estate, interest therein or improvement thereon, for others.

* * * * *

One act for a compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell, or exchange real estate or leasing, or renting, or offering to rent real estate, except as herein specifically excepted shall constitute the person, firm or corporation, performing, offering, or attempting to perform any of the acts enumerated herein, a real estate broker or a real estate salesman within the meaning of this act."

It seems to me that section 6373-42, subsection 5, would apply in all cases where a real estate broker or salesman retained money which did not rightfully belong to him by reason of a real estate transaction. The provisions of that section are not limited solely to cases where a broker or salesman has obtained money while acting as agent for another. In other words, the provisions of subsection 5 are broad enough to require a real estate broker or salesman to account for or remit money obtained by him while acting either as an agent for another or for persons who are not his principals but with whom such real estate broker or salesman has had dealings involving real estate. The primary purpose of the real estate act was to regulate the conduct of real estate brokers and salesmen in respect to their relations with the public.

It is therefore my opinion that the State Board of Real Estate Examiners has authority, by virtue of section 6373-42, sub-section 5, General Code, to suspend or revoke a license of any real estate broker who fails or refuses to remit money deposited with said broker as security for rent under a lease which the broker had no authority to make in his own name as lessor.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3705.

APPROVAL, BONDS OF GUYAN TOWNSHIP RURAL SCHOOL DISTRICT, GALLIA COUNTY, OHIO—\$1,300.00.

COLUMBUS, OHIO, October 28, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3706.

INDIAN LAKE—APPROPRIATION HOUSE BILL NO. 596 FOR CONSTRUCTION OF SANITARY SEWER—ABSOLUTE CONTRIBUTION BY STATE WITHOUT REFERENCE TO BENEFITS ACCRUING TO STATE LANDS.

SYLLABUS:

The appropriation of the sum of \$72,000.00 made to the Controlling Board by the 89th General Assembly, in and by House Bill No. 596, approved by the Gov-