

Note from the Attorney General's Office:

1928 Op. Att'y Gen. No. 28-2154 was overruled in part by 1987 Op. Att'y Gen. No. 87-052.

ment of Agriculture, and Willard Hatton, of Columbus, Ohio. This contract covers the general contract for painting buildings at Ohio State Fair Grounds, Columbus, Ohio, as set forth in Item 1 of the proposal dated May 2, 1928, and calls for an expenditure of \$6,900.00. You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. Inasmuch as the contract does not involve the construction of buildings, structures or other improvements, the consent of the Controlling Board to the expenditure of the money is not required. You have also submitted a contract bond upon which The Southern Surety Company appears as surety, sufficient to cover the amount of the contract.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2154.

AUCTIONEER—MUST SECURE REAL ESTATE BROKER'S LICENSE IN ORDER LEGALLY TO SELL REAL ESTATE.

SYLLABUS:

Any auctioneer who offers for sale real estate at auction is required by the provisions of Sections 6373-25, et seq., General Code, to secure a license as a real estate broker, irrespective of the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto.

(Opinion No. 960 of September 7, 1927, approved and followed.)

COLUMBUS, OHIO, May 24, 1928.

HON. ELMER L. GODWIN, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of May 21st, in which you request my opinion, and which reads as follows:

“Is it necessary for an auctioneer who sells real estate at private or public sale to secure a license under Section 6373-29 of the General Code?”

The question presented by you was passed upon by this department in Opinion No. 960, rendered under date of September 7, 1927, to Hon. Cyrus Locher, Director of Commerce, the syllabus of that opinion reading as follows:

“Any auctioneer who offers for sale real estate at auction is required by the provisions of Sections 6373-25, et seq., General Code, to secure a license as a real estate broker, irrespective of the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto.”

In the opinion, after quoting Section 5866 of the General Code, requiring certain auctioneers to procure a license, which section reads in part as follows:

“A person shall not exercise the occupation of auctioneer or sell by public auction, vendue or outcry, any property or effects, except utensils of husbandry,

household furniture, real estate, produce, horses, sheep, hogs and meat cattle, without a license as herein provided. * * *

the following language was used:

"You will observe that by the specific language of this section it is unnecessary to secure an auctioneer's license to sell real estate. Manifestly, therefore, the licensing section has no application to sales of real estate at auction and the fact that, by reason of other activities of the auctioneer, he may be amenable to the auctioneer's license law and so must secure a license, does not extend the licensing provision to his activities in connection with the sale of real estate.

The real estate broker's license law is of general application and the terms of Section 6373-25 of the General Code are clearly applicable to sales by auctioneers. The definitions of real estate broker and real estate salesman are manifestly broad enough to cover auctioneers and their employes. Those definitions, as found in Section 6373-25, are as follows:

"'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.

'Real estate salesman' means a person, who for a commission, compensation or valuable consideration, is employed by a licensed broker, to sell, or offer for sale, or to buy, or to offer to buy, or to lease, or to offer to lease, rent, or offer for rent, any real estate, interest therein or improvement thereon.'

None of the exceptions contained in the later language of the above section, which I have not quoted, is applicable and I am therefore of the opinion that any auctioneer who offers for sale real estate at auction is required by the provisions of Section 6373-25, et seq., of the General Code to secure a license as a real estate broker, irrespective of the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto."

For the reasons stated in Opinion No. 960, above quoted, it is my opinion that any auctioneer who offers for sale real estate at auction is required by the provisions of Sections 6373-25, et seq., General Code, to secure a license as a real estate broker, irrespective of the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2155.

COUNTY COMMISSIONERS—LIABILITY UPON FAILURE TO ERECT
GUARD RAILS—NORTON-EDWARDS ACT, DISCUSSED.

SYLLABUS

It is the duty of county commissioners to erect guard rails at all perpendicular wash banks more than eight feet in height, where such banks have an immediate connection with