

'Hereditament' includes whatever, upon the death of the owner, passes, in the absence of disposition by will, by the act of the law, to the heir, and not to the executor. The term is more extensive in its signification than the word 'tenement', which it generally, though not always, includes, and it may, in England at least, include things of a personal character."

It seems clear that the interest in the land herein conveyed comes within the terms of the statutes, namely, lands, tenements or hereditaments. It is also noted that the habendum clause reads as follows: "To Have and to Hold the same unto said party of the second part, its successors and assigns." It is a conclusive grant of a right in and to the land granted and said grant is perpetual. The conveyance, therefore, comes within the provisions of Section 2757, General Code, being a deed or instrument of writing for the absolute and unconditional sale or conveyance of an interest in lands, tenements and hereditaments.

It is therefore my opinion, specifically answering your question, that the conveyance of an easement to the Ohio Power Company, its successors and assigns, in accordance with the form and language therein submitted, is an instrument of writing for the absolute and unconditional sale and conveyance of an interest in lands, tenements and hereditaments, and should, therefore, under the provisions of Section 2757, General Code, be recorded in the record of deeds.

Respectfully,

EDWARD C. TURNER,

Attorney General.

3002.

REAL ESTATE BROKER—MAY ALSO BE LICENSED AS REAL ESTATE SALESMAN.

SYLLABUS:

An individual may be licensed as a real estate broker and at the same time be also licensed as a real estate salesman employed by another licensed broker.

COLUMBUS, OHIO, December 10, 1928.

HON. EARL D. BLOOM, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication, as follows:

"In several instances the State Board of Real Estate Examiners has licensed an individual both as a broker and as a salesman under another broker.

The question has been raised as to whether one individual can be licensed under the real estate license law, both as a broker and as a salesman.

Will you please give us your legal opinion as to whether an individual can be licensed at the same time as a real estate broker and as a real estate salesman under the real estate license law?"

There is little in the law governing the licensing of real estate brokers throwing light on the question you present. The answer is rather to be governed from the general theory of the law than from any specific provision thereof. The theory is that the agency which deals with the public in connection with a real estate transaction

shall be under the supervision of the board of Real Estate Examiners and be bonded to protect the public against any violation of law in connection with the transaction. If an individual acts as a broker himself, he, of course, represents directly members of the public and the responsibility for his acts is his alone. Accordingly he must be licensed as a broker and must give bond in accordance with law.

If, on the other hand, an individual is employed merely as a salesman for a broker, the responsibility in connection with particular real estate transactions rests primarily with the broker for the conduct of his salesman. The salesman is the agent or employe of the broker and, as such, is acting for the broker in connection with real estate transactions. So far as the things done in connection with real estate transactions are concerned, the act of the employe is the act of the principal. It is accordingly not required that any separate bond be provided by a real estate salesman, his acts being covered by the provisions of the bond of the broker.

It may very well occur that one individual may act in his own capacity as a broker in dealing in real estate and also serve as a salesman for another broker in connection with the disposition of particular properties or for certain limited periods of time. Quite obviously under such circumstances two distinct businesses are involved. The one is the business of the individual dealing as a broker, and the other the business of the second broker for whom the individual acts as a salesman. Since there is no enlightenment in the statute, I am of the opinion that, in the absence of prohibitory language, it is permissible for one and the same individual to hold a broker's license and at the same time a salesman's license to act as a salesman for another licensed broker. To so hold is, in my opinion, but a recognition of the theory behind the law.

I have not overlooked the fact that Section 6373-45 contains the following sentence:

"It shall be unlawful for any licensed real estate broker to pay a commission for performing any of the acts specified in Section 1 of this act (G. C. 6373-25) to any person who is not a licensed real estate broker or a licensed real estate salesman."

This sentence might be construed as impliedly authorizing a broker to act as a salesman of another broker without further license. The better construction of this language is, in my opinion, that it only applies where two brokers co-operate in the consummation of a particular real estate transaction under an agreement providing for a division of the fee to be derived therefrom.

It is ordinarily true that the public places reliance upon the broker rather than upon the salesman through whom the deal is consummated. That is to say, in the case you present, although the salesman may be licensed as a broker to act independently, yet the public with whom he is dealing on behalf of the second broker may be relying solely upon the responsibility of such second broker. If the first broker were not licensed to act as a salesman for the second broker, then it might possibly be urged that there existed no responsibility of the second broker for the things done in connection with the particular transactions. Such a position would be, in my opinion, contrary to the evident purpose of the law, which is to fix responsibility upon the person, firm or corporation actually making the deal, whether it is made direct by the broker or through a salesman.

I am accordingly of the opinion that one individual may be licensed as a real estate broker and at the same time be also licensed as a real estate salesman employed by another licensed broker.

Respectfully,
EDWARD C. TURNER,
Attorney General.