

1935.

REAL ESTATE LICENSE—EXECUTORS, ETC., APPOINTED BY COURT TO SELL REAL ESTATE OR TO HIRE REAL ESTATE SOLD, EXEMPTED FROM FEE.

SYLLABUS:

Where a court authorizes executor, administrator or trustee to employ designated person to sell real estate at public sale, such person so designated is exempt from the provisions of Section 6373-25 et seq. of the General Code.

COLUMBUS, OHIO, April 5, 1928.

HON. JAY S. McDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

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

“Could I have your opinion in reference to the provisions and intent of Section 6375-25, found in Volume 112, Ohio Laws, at page 262?”

This matter was particularly brought to my attention by a newspaper article giving the ruling of the State Board of Real Estate Examiners, holding that auctioneers to sell real estate must secure a license from such board.

Now this is my question: In case of judicial sales and sales on order of the court of real estate, by executors, administrators or trustees, and such executors, administrators or trustees secure the services of another to cry such judicial sales, must such person secure a broker's license in order to make such judicial sale?

We have this situation in this county: Mr. P., for more than 25 years, has been and is now a deputy sheriff and our court bailiff, and cries all our sheriff's sales, for which there is no compensation; but by reason of his experience in such matters many executors and administrators secure him to cry judicial sales for them, and pay him a nominal fee. Now, would Mr. P. be required to secure a broker's license in order to make such judicial sales?”

The ruling of the State Board of Real Estate Examiners, to which you refer, resulted from an opinion of this department, No. 960, dated September 7, 1927, the syllabus of which is as follows:

“Any auctioneer who offers for sale real estate at auction is required by the provisions of Section 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.”

The answer to your question depends upon the interpretation of Section 6373-25, General Code, which, so far as pertinent, is 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.

'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.

Neither of the terms real estate broker or real estate salesman hereinbefore defined includes a person, firm or corporation, or the regular salaried employes thereof, who performs any of the aforesaid acts.

* * *

(c) As receiver or trustee in bankruptcy, as guardian, executor, administrator, trustee, assignee, commissioner or any person doing the things hereinbefore mentioned, under and by virtue of authority or appointment of any court or courts, or as executor or trustee under any trust agreement, deed of trust or will;

(d) Nor shall his act apply to public officers while performing their official duties:

* * *

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."

Clearly when the person in question offers at public sale real estate which he does not own and receives compensation therefor, he becomes a real estate broker within the definition just quoted. The sole remaining question is, therefore, whether the exceptions (c) and (d) are broad enough to make inapplicable the real estate broker's license law in this instance.

By the terms of the exception found in paragraph (c), it is clear that executors, administrators or trustees could themselves offer for sale and sell real estate which they hold by virtue of their trust without being amenable to the provisions of the license law. It is to be noted, however, that this exception applies only to these persons in their representative capacity and there is nothing in the language of the exception from which it may be inferred that the exemption may be extended to a third person employed by such representatives for the purpose of selling such real estate.

The exception contained in paragraph (d) is manifestly of no application since, while the person in question does cry sales in connection with his official capacity as deputy sheriff, yet where he is employed by executors, administrators or trustees, his services are then not performed in an official capacity. As to those sales, therefore, which are performed in his capacity as deputy sheriff, the exemption of paragraph (d) would apply, but this would not extend to the case of other sales where he receives compensation from private individuals.

You are, of course, well aware of the rule which requires that exceptions to the application of otherwise general law are to be strictly construed. Applying this rule in the present instance, I feel under the facts as you state them that the person engaged by an executor, administrator or trustee, to offer for public sale real estate, is a real estate broker in the event he receives compensation for such services and accordingly must secure a broker's license.

I may suggest, however, that a course of procedure might be adopted which would obviate the necessity of securing a license for transactions of this character. You will observe from the language of paragraph (c) that any person offering for sale real estate "under and by virtue of authority or appointment of any court or courts," is exempted from the definition of a real estate broker. I accordingly feel that, if the court having jurisdiction of the estate or trust the real estate of which is being sold previously authorizes the services of the individual in question, the exemption would apply and it would be unnecessary for the individual to secure a license to act as a real estate broker.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1936.

APPROVAL, NOTES OF KINGSVILLE TOWNSHIP RURAL SCHOOL DISTRICT, ASHTABULA COUNTY—\$125,000.00.

COLUMBUS, OHIO, April 5, 1928.

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

1937.

APPROVAL, BONDS OF THE VILLAGE OF BEALLSVILLE, MONROE COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, April 5, 1928.

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

1938.

APPROVAL, BONDS OF THE CITY OF GREENVILLE, DARKE COUNTY, OHIO—\$10,612.26.

COLUMBUS, OHIO, April 5, 1928.

Industrial Commission of Ohio, Columbus, Ohio.