

Truax, Deed Record No. 140, page 2, and of the Deed of Martha L. Truax, et al., to William H. Ramsey, et al., set forth in Deed Record No. 140, page 4, Records of the Recorder's Office."

Upon examination of the resubmitted abstract, I am of the opinion that the same shows a good and merchantable title to said land in William H. and Carrie Ramsey, subject to the following encumbrances:

1. The easement given by A. L. Hendricks to the Bergholz Telephone Company, described in the paragraph numbered 1, Opinion No. 738, rendered to you under date of July 14, 1927, still subsists.

2. The taxes for 1926, payable in June, 1927, amounting to \$67.57, are still unpaid and a lien.

3. The 1927 taxes are yet unpaid and a lien.

4. An assessment for the construction of the Richmond-Pravo Road amounting to \$455.04, payable in twelve instalments of \$37.92 each, the next instalment being payable in December, 1927, is a lien.

The abstract does not show any examination in the United States Court, and the examination of the judgment indexes in the clerk's and sheriff's offices for judgment liens only goes back as far as 1910.

The deed has been executed by William H. Ramsey and Carrie Ramsey under date of August 25, 1927, and acknowledged before a notary public. This deed when delivered will pass a good title to the State of Ohio.

The abstract of title and deed are herewith returned to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1032.

REAL ESTATE—BROKER DEFINED—SPECIFIC CASE.

SYLLABUS:

A real estate company actually owning property in this state and engaged in the development of such property and its resale in parcels through regularly salaried officers, is not a real estate broker within the terms of Section 6373-25 of the General Code, and its officers employed upon a regular salary are likewise not real estate brokers in the absence of any commissions, compensations or considerations accruing to them by reason of such sales on behalf of the corporation, other than their regular salaries.

COLUMBUS, OHIO, September 21, 1927.

HON. CYRUS LOCHER, *Director Department of Commerce, Columbus, Ohio.*

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

"The 'X' Realty Company is a corporation that owns two parcels of land in Ohio. All the stock is owned by three individuals, the president, vice-president and secretary and treasurer, except two qualifying shares held

by the other two members of the board of directors. This company has allotted said two parcels of land and is marketing said lots. The corporation pays no commission or salary or compensation in any form to any salesman. The selling is all done by the president, vice-president and secretary and treasurer,—the three officers of the corporation and owners of the stock; all three draw a salary. These three officers claim that they are drawing said salary as officers of the corporation and not as commissions from the corporation. Neither the corporation nor any of its officers sell any real property and neither the corporation nor the officers receive any compensation from any source for selling any real estate, except their salary as mentioned above.

The Board of Real Estate Examiners respectfully requests that you give us an opinion whether, under the real estate licensing law, this corporation and these three officers are required to secure broker's licenses."

Your inquiry is, I believe, answered by the language of Section 6373-25 of the General Code, 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.

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 perform any of the aforesaid acts.

(a) With reference to real estate or any interest therein owned by such person, firm or corporation, or acquired on his or its own account in the regular course of it, or as an incident to the management of such property and the investment therein; * * *

You will observe that the definitions of "real estate broker" and "real estate salesman" are specifically not applicable to a corporation, or the *regularly salaried employes thereof*, who sell, offer for sale, etc., real estate owned by such corporation. Quite obviously, therefore, in the instance you cite, it is not necessary that either the corporation or its officers be licensed.

From the language of the exception, it is clear that any regularly salaried officer of a corporation which actually owns real estate, is not either a salesman or broker when engaged in the development or resale of the corporation property. If, however, an employee of the firm were to sell such real estate on a commission basis, the exception would not apply and it would be necessary for such employee to be licensed as a real estate broker.

My conclusion is, of course, premised upon the fact that the salaries paid in the instance which you cite are bona fide regular salaries. In any particular case where the salary is a mere subterfuge and commissions are actually being paid under such guise, the exception would not apply.

I am therefore of the opinion that a real estate company actually owning property in this state and engaged in the development of such property and its resale in

parcels through regularly salaried officers, is not a real estate broker within the terms of Section 6373-25 of the General Code, and its officers employed upon a regular salary are likewise not real estate brokers in the absence of any commissions, compensations or considerations accruing to them by reason of such sales on behalf of the corporation, other than their regular salaries.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1033.

TRANSFER OF TERRITORY FROM SCHOOL DISTRICT IN ONE COUNTY TO CONTIGUOUS SCHOOL DISTRICT IN ANOTHER COUNTY—DIVISION OF FUNDS—WHAT SHOULD BE CONSIDERED IN DIVISION OF FUNDS.

SYLLABUS:

1. *Transfers of territory from a school district in one county to a contiguous county school district of another county are not complete until the board of education of the county school district to which the transfer is being made makes an equitable division of the funds and indebtedness between the two districts involved and if such county board of education neglects or refuses to make such equitable division of funds as is contemplated by the statutes the transfer will never become effective.*

2. *In making a division of the funds and indebtedness between two school districts involved in the transfer of territory from one to the other, consideration should be given not solely to the comparative tax valuation of the property located within the territory transferred and that of the entire districts before transfer, but to other factors bearing on the situation as well.*

COLUMBUS, OHIO, September 21, 1927.

HON. HERMAN F. KRICKENBERGER, *Prosecuting Attorney, Greenville, Ohio.*
Ohio.

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“For several months past there has been a controversy between the county board of education of this county and the county board of education of an adjoining county (Preble County) and certain individuals in this county who have been trying to get transferred from a school district in this county to a school district in the adjoining county, and, in connection therewith, there are several questions involving the construction of the statute (Section 4696 of the General Code) concerning which I would like to have your opinion. I will first state the facts:

On June 8, 1926, one McClure, et al., residing in the Hollansburg Village School District of Darke County, Ohio, petitioned the Darke County Board of Education for transfer to a district in Preble County, Ohio. The Darke