

949.

REAL ESTATE—BANK AND TRUST COMPANY DOES NOT NEED LICENSE IN ITS CAPACITY AS EXECUTOR, TRUSTEE, ETC.— OUTSIDE OF CAPACITY NEEDS LICENSE TO SELL REAL ESTATE— SECTION 6373-25, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *A bank or trust company may, in its capacity as executor, administrator or trustee under any trust agreement, deed of trust or will, do all things incident to the proper handling and care of the property under its control without being subject to the provisions of law relative to the license of a real estate broker and salesman.*

2. *In the event that a bank or trust company for a commission, 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, when not in the exercise of its duties as guardian, trustee, executor, administrator, or trustee under any trust agreement, deed of trust or will, it is acting as a real estate broker, and, as such, must secure a license under the provisions of Sections 6373-25, et seq., of the General Code.*

3. *It is unnecessary for the Board of Real Estate Examiners to consider the charter authority of trust companies or banks with trust powers, to engage in the business of handling property for others as agents in such a way as to make them amenable to the real estate brokers' law.*

COLUMBUS, OHIO, September 3, 1927.

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

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

“Some state banks and trust companies, and some national banks thru their Trust Departments, seem to be engaged in the handling of property for customers, in the renting of property, and the collection of rents, and some of them in the selling of real estate for which they charge a fee.

The Board of Real Estate Examiners respectfully requests answers to the following questions:

1. Are state banks and trust companies, or national banks through their Trust Departments required to secure brokers' and salesmen's licenses?

2. If state banks and trust companies, and national banks thru their Trust Departments are required to secure brokers' and salesmen's licenses, is it the duty of the Board of Real Estate Examiners to ascertain whether the charter of said companies authorize said companies to engage in said business, and if said charters do not authorize them to engage in said business, is it the Board's duty to refuse to issue licenses to said companies?”

Section 6373-25 of the General Code provides in part 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 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;"

It is apparent from the exceptions contained in paragraph (c) that any of the acts which you mention, if done by the bank or trust company in the capacity of trustee under any specific trust agreement, deed of trust or will, would not be subject to the act. You do not state in your letter whether these acts are in the execution of trusts or ordinary transactions without any definite trust relationship existing between the banks and their customers. If the transaction is not incident to the administration of a trust as defined in the exception quoted above, it is clear that the bank or trust company would come within the definition of "real estate broker" and it would be necessary for it to qualify under the act.

My conclusion is that a bank or trust company may, in its capacity as executor, administrator or trustee under any trust agreement, deed of trust or will, do all things incident to the proper handling and care of the property under its control without being subject to the provisions of law relative to the license of a real estate broker and salesman. In the event that a bank or trust company for a commission, 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, when not in the exercise of its duties as guardian, trustee, executor, administrator, or trustee under any trust agreement, deed of trust or will, it is acting as a real estate broker, and, as such, must secure a license under the provisions of Sections 6373-25, et seq., of the General Code.

You also inquire whether, in the event that state banks and trust companies, and national banks through their trust departments are required to secure brokers' and salesmen's licenses, it is the duty of the Board of Real Estate Examiners to ascertain whether there is charter authority to engage in this business and to refuse licenses in the event of lack of such authority.

I assume that in all instances the acts which, under my discussion heretofore, would require the issuance of licenses, are done by banks which have trust powers. In other words, I do not understand that the activities which you describe are done by corporations authorized to do banking business alone.

So far as commercial or savings banks organized either under the national bank act or state laws, are concerned, I am of the opinion that there is no authority for such an institution to perform services which you mention.

Section 710-41 of the General Code, which provides for the incorporation of a commercial bank, savings bank, trust company or combination of two or more of such class of business, requires that the articles of incorporation shall state among other things:

"The purpose for which it is formed, whether that of a commercial bank, savings bank, trust company, or a combination of two or more or all, of such classes of business, or a special plan bank, as provided in Section 180 of this act."

Section 710-47 of the General Code, is as follows:

"When such articles of incorporation are so recorded, the persons who subscribe them, their associates, successors and assigns, by the name designated therein, shall become a body corporate with succession, and, as such shall have power:

- (a) To adopt and use a corporate seal, and to alter it at will;
- (b) To contract and be contracted with;
- (c) To sue and be sued;
- (d) To adopt regulations for the government of the corporation, not inconsistent with the constitution and laws of this state;
- (e) To do all needful acts, to carry into effect the objects for which it was created."

While it cannot be satisfactorily determined just what the limitations upon the powers of commercial and savings banks are, I believe that it may be said that these powers are fairly strictly construed, and that the right to act as agent in the performance of the things which you mention would not be comprehended therein. This rule of strict construction is particularly applicable to national banks.

As I have before stated, however, your inquiry apparently has to do particularly with the exercise of the right to act as agent by trust companies. Obviously the powers of a trust company are essentially different from those of strictly banking institutions.

Section 710-159 of the General Code, is as follows:

"A trust company may act as agent, and take, accept and execute any and all trusts, duties and powers in regard to the holding, management and disposition of any property or estate, real or personal, which may be committed or transferred to, or vested in said trust estate, and the rents and profits thereof or the sale thereof, as may be granted or confided to it by any person, association, corporation, municipal or other authority; and may act as trustee under any will or deed or other instrument creating a trust for the care and management of property under the same circumstances and in the same manner, and subject to the same control by the court having jurisdiction of the same as in the case of a legally qualified person."

You will observe that specific authority is therein granted to a trust company to act as agent. In just what respect that agency may exist, is not stated, but I do not think that it could be successfully contended that a trust company formed either under the laws of Ohio or the national banking act, may not engage in the handling of property for customers, in the renting of property and the collection of rents, and in selling real estate and charging a fee therefor. As you no doubt know, the extension of trust powers to national banks is made subject to the laws of the individual states regulating the exercise of such powers. Inasmuch as the Ohio statute grants the broad powers enumerated in the section above quoted, I feel there is no question concerning the right of a trust company or bank with trust powers, to do the character of business which you mention.

I have therefore concluded it will be unnecessary for the Board of Real Estate Examiners to consider the charter authority of trust companies or banks with trust powers, to engage in the business of handling property for others as agents in such a way as to make them amenable to the real estate brokers' law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

950.

REAL ESTATE—PERSON, FIRM, OR CORPORATION MUST QUALIFY AS DEALER UNDER SECTIONS 6373-15, ET SEQ., IF THEY DEAL IN REAL ESTATE LOCATED OUTSIDE STATE OF OHIO.

SYLLABUS:

Any person, firm or corporation, dealing within this state in real estate located elsewhere, must qualify as a dealer under the provisions of Sections 6373-15, et seq., of the General Code, and must also secure a license as a real estate broker and such real estate salesman's licenses as may be necessary under the provisions of Sections 6373-25 to 6373-51 of the General Code. In such a case it is necessary that proper bond be given both to the commissioner of securities and the board of real estate examiners, as provided by law.

COLUMBUS, OHIO, September 3, 1927.

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

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

“The securities law provides that anyone selling foreign real estate, that is real estate located outside of Ohio, in Ohio, must have the same qualified in the Division of Securities, and also get a dealer's license. The so-called real estate law, creating the Board of Real Estate Examiners, provides that non-residents selling real estate in Ohio must have a real estate broker's license.

Please inform us whether it would be necessary for a firm selling real estate in Ohio, that is located in another state, to qualify both under the so-called Blue Sky Law and under the Real Estate Law, before the same can be legally sold in Ohio, and whether it will be necessary for the firm to file a bond both in the Division of Securities, for the license, and with the Board of Real Estate Examiners, for a real estate license.”

As you state, the securities act requires that no one shall within this state deal in real estate not located in Ohio unless he be licensed as a dealer, as provided in Section 6373-3 of the General Code. It further provides that no real estate located outside of Ohio shall be dealt in unless it is certificated. These provisions are found in Section 6373-15, which is as follows:

“No person or company, unless licensed in the manner and under the conditions applicable thereto hereinbefore provided for dealers, shall, within this