

ships, Williams County, Ohio, leasing and demising to the state for the purpose therein stated tracts of land in said townships and county.

The leases here in question, designated with respect to the number of the lease, the owner of the property, and the acreage of land covered by the respective leases, are as follows:

Number	Name	Acreage
2277	W. R. Cotterman and Carrie Cotterman	4.85
2278	David A. Erlston and Bessie O. Erlston	10.00
2279	George L. Brannan	83.00
2280	John Ruff	109.25

Each and all of these leases are for a term of five (5) years and in each instance the property described is leased to the state for the sole purpose of a state game refuge. And, in this connection, it is noted that as to each of these leases the Conservation Council, acting through you as Conservation Commissioner, has made an order setting aside the lands described in the lease for the purpose of a state game and bird refuge, as provided for in section 1435-1, General Code.

Upon examination of these leases, I find that the same have been executed and acknowledged by the respective lessors in the manner provided by law. I also find upon examination of the provisions of these leases and of the conditions and restrictions therein contained, that the same are in conformity with statutory provisions relating to the execution of leases of this kind.

I am accordingly approving these leases as to legality and form, as is evidenced by my approval endorsed upon the several leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4356.

LICENSE—ATTORNEY AT LAW NOT REQUIRED TO PROCURE LICENSE AS REAL ESTATE BROKER OR SALESMAN WHEN—LICENSE NOT REQUIRED WHEN POWER OF ATTORNEY EXECUTED.

SYLLABUS:

1. *One who performs any of the acts set forth in the definition of "real estate broker" or "real estate salesman" contained in Section 6373-25, General Code, in pursuance of a power of attorney from the owner of the real estate or any interest therein, which power of attorney has been executed as provided by Section 8512, General Code, is not required to have a license as real estate broker or real estate salesman.*

2. *An attorney at law who does any of the acts set forth in the definition of "real estate broker" or "real estate salesman" contained in Section 6373-25, General Code, in the performance of his duties in the rendition of legal services for a client, is not required to have a license as a real estate broker or a real estate salesman. In the event an at-*

torney at law performs any of the acts set forth in the definition of "real estate broker" or "real estate salesman" contained in Section 6373-25, General Code, which are not incident to or connected with his duties in the rendition of legal services for a client, he is not exempt from the provisions of the law relating to real estate brokers and salesmen.

COLUMBUS, OHIO, June 22, 1935.

State Board of Real Estate Examiners, Columbus, Ohio.

GENTLEMEN:—This acknowledges receipt of your communication which reads as follows:

"The state board of real estate examiners is in receipt of a communication from a local real estate board, which reads as follows:

'A good many private individuals are collecting rents and receiving commissions therefrom in this city, who are not licensed. They are being advised by the local probate court that they can do so under section 6373-25, G. C. (b) —"In pursuance of a duly executed power of attorney from the owner of the real estate or any interest therein."

If they give this interpretation to the law under that power of attorney any individual can sell real estate and perform other acts the same as a licensed broker, and we, the members of the local real estate board, would like to know just what is the real intent and application of this section of the law.

Very frequently we have difficulty with the attorneys at law claiming that they can collect a commission for the sale of real estate when not acting under court order.

We had this experience recently with an attorney at law in an adjoining county who claimed that as an attorney at law he was exempt under the law, and could act as a broker in the sale of real estate and collect commission therefor and that there would be no violation of the law to divide the commission with him where he had furnished the prospective buyer and the deal was consummated. We told him he was entirely wrong about this and advised him to write to the attorney general for an opinion.'

The third paragraph of section 6373-25 G. C. provides:

'Neither of the terms real estate broker or real estate salesman herein-before defined includes a person, firm or corporation, or the regular salaried employes thereof, who performs any of the aforesaid acts, * * *

(b) In pursuance of a duly executed power of attorney from the owner of the real estate or any interest therein; * '

Under the above statement of facts, please advise the state board of real estate examiners as to an interpretation of the statute and the limitations that may be construed to apply to attorneys or others acting under a power of attorney in real estate transactions."

Section 6373-25, General Code, reads in part as follows:

"As used in this act:

'Real estate broker' means a person, firm, or corporation who, for a com-

mission, 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,

* * * * *

(b) In pursuance of a duly executed power of attorney from the owner of the real estate or any interest therein;

* * * * *

(e) Nor shall this act, be construed to include in any way the services rendered by an attorney at law in the performance of his duties as such attorney at law;

* * * * *

Paragraph (b) of said section does not exempt from the operation of the act attorneys at law as such. The holder of a power of attorney is an attorney in fact as distinguished from an attorney at law. An "attorney in fact" is defined as:

"A private or special attorney, appointed for some particular or definite purpose not connected with a proceeding at law; one who is given authority by his principal to do a particular act not of a legal character." 6 C. J. 818.

In the case of *Hall vs. Sawyer*, 47 Barb. 116, the following is stated:

"A person may be an attorney in fact, for another, without being an attorney at law; a distinction well understood as existing in all kinds of business transactions. They are sometimes distinguished by attorneys in fact, or private attorneys, and attorneys at law, or public attorneys. The former is one who is authorized by his principal, either for some 'particular' purpose, or to do a particular act, not of a legal character. The latter is employed to appear for the parties to actions, or other judicial proceedings, and are officers of the courts. So that the mere addition of the word 'attorney,' after the name of the principal, does not of necessity carry with it the idea that the attorney is an officer of the court, or an attorney at law.

See also *Treat vs. Tolman*, 113 F. 892.

Likewise, paragraph (b) does not exempt agents as such, even though their authority to act as agent may be by written instrument. As stated in *Porter vs. Hermann*, 8 Cal. 619:

"All attorneys in fact are agents, but all agents are not necessarily attorneys in fact. Agent, is the general term which includes brokers, factors, consignees, shipmasters, and all other classes of agents. By attorneys in fact, are meant persons who are acting under a special power, created by deed. It is true, in loose language, the terms are applied to denote all agents employed

in any kind of business, except attorneys at law, but in legal language they denote persons having a special authority by deed."

See also *White vs. Furgeson*, 29 Ind. App. 144.

Under said paragraph (b), the power of attorney must be a duly executed power of attorney,—that is, executed in accordance with the requirements of law. Section 8512, General Code, reads as follows:

"A power of attorney for the conveyance, mortgage, or lease of any estate or interest in real property, must be signed, attested, acknowledged, and certified in the same manner as deeds, mortgages, and leases."

It is apparent that one who performs any of the acts set forth in the definition of "real estate broker" or "real estate salesman" contained in Section 6373-25, General Code, in pursuance of a power of attorney from the owner of the real estate or any interest therein, which power of attorney has been executed as provided by Section 8512, General Code, is not required to have a license as real estate broker or real estate salesman.

Paragraph (e) of said section provides that the act does not apply to services rendered by an attorney at law, provided such services are rendered in the performance of his duties as such attorney at law. In other words, if in the rendition of legal services for a client it becomes necessary or advisable to buy, sell or lease real estate for such client, the attorney rendering such services could, if authorized, perform such services on behalf of his client without procuring a license, in the same manner as the client could, even though a charge be made therefor by the attorney, but an attorney could not perform such acts for clients or others for compensation independent of and not incident to the rendition of any legal services for such persons, without having a license.

I am therefore of the opinion that an attorney at law who does any of the acts set forth in the definition of "real estate broker" or "real estate salesman" contained in Section 6373-25, General Code, in the performance of his duties in the rendition of legal services for a client, is not required to have a license as a real estate broker or a real estate salesman. In the event an attorney at law performs any of the acts set forth in the definition of "real estate broker" or "real estate salesman" contained in Section 6373-25, General Code, which are not incident to or connected with his duties in the rendition of legal services for a client, he is not exempt from the provisions of the law relating to real estate brokers and salesmen.

Respectfully,
JOHN W. BRICKER,
Attorney General.