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REAL ESTATE BROKER — LICENSED — UNLAWFUL TO DIVIDE COMMISSION OR FEE RECEIVED FOR ACTS SPECIFIED IN SECTION 6373-25 G. C. WITH ANY PERSON NOT A LICENSED REAL ESTATE BROKER OR SALESMAN — OHIO STATE BOARD OF REAL ESTATE EXAMINERS.

SYLLABUS:

It is unlawful for any duly licensed Ohio real estate broker to divide a commission or fee received for the performance of any of the acts specified in Section 6373-25, Ohio General Code, with any person who is not a real estate broker or real estate salesman duly licensed as such by the Ohio State Board of Real Estate Examiners.

Columbus, Ohio, April 26, 1940.

State Board of Real Estate Examiners,
407 Wyandotte Building,
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your request for my opinion on the following:

“Enclosed herewith is letter from the West Virginia Real Estate Commission regarding the division of commission between brokers of that State and the State of Ohio. Inasmuch as there is a difference of opinion on this question, we would appreciate receiving an official opinion from you in order that the brokers of this State may be guided correctly.”

The letter from the West Virginia Real Estate Commission, to which you refer in your communication, reads in part as follows:

“We have recently been advised by the Real Estate Board of Parkersburg, West Virginia, that one of your investigators has advised them it is in violation of your law for a real estate broker to divide commissions with an out of state broker, and they have asked us for information in this regard.

West Virginia law does not ban this practice so long as it involves a broker or salesman duly licensed by the proper state department. Apparently this is based on the theory that so long as a real

estate man is licensed the public will receive the full protection of the law.

Inasmuch as West Virginia borders on Ohio from Chester to Huntington, it is likely that many agreements have been and could be worked out between brokers of the two states. With this point in mind, we are suggesting that some reciprocal agreement might be worked out that would be to our mutual advantage."

Section 6373-26, Ohio General Code, provides as follows:

"No person, partnership, association, or corporation shall act as a real estate broker or as a real estate salesman, or advertise or assume to act as such, without first being licensed so to do as provided in this act."

By virtue of that section, it is requisite that any person, resident or non-resident of Ohio, desiring to act as a real estate broker in this state must first obtain a proper license from your Board. Failure so to do would subject one to the penal provisions of Section 6373-49, Ohio General Code, which reads as follows:

"Whoever violates section 6373-26 of the General Code shall upon conviction thereof be fined not less than twenty-five dollars nor more than one thousand dollars or imprisoned in the county jail not to exceed one year, or both."

It being clear that a person must be licensed to perform any act as a real estate broker, as that term is defined in Section 6373-25, Ohio General Code, we are now called upon to consider whether or not one duly licensed may divide a commission with a real estate broker duly licensed by a sister state.

Pertinent to the problem are Sections 6373-42 and 6373-47, Ohio General Code. Said sections provide in part as follows:

Section 6373-42, Ohio General Code:

"The state board of real estate examiners may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the conduct of any licensee under the law, within this state and may suspend, or revoke or refuse to renew any license at any time where the licensee, in performing or attempting to perform any act as a real estate broker or real estate salesman or in any transaction involving the leasing or sale of an interest in real estate, is guilty of:

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(11) Having paid commissions or fees to, or divided commission or fees with anyone not licensed as a real estate broker or salesman,

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Section 6373-47, Ohio General Code:

“It shall be unlawful for any licensed real estate broker to pay a commission for performing any of the acts specified in section 6373-25 of the General Code to any person who is not a licensed real estate broker or a licensed real estate salesman. Violation of the provisions of this section shall be a cause of suspension, revocation or refusal to renew in accordance with the proceedings provided for in sections 6373-39 to 6373-44, both inclusive, of the General Code. * * * ”

Those sections make it unlawful for one licensed by your Board to divide a commission or fee received as such licensee with anyone not a “licensed real estate broker or a licensed real estate salesman”. As set out above, the license of one who divides commissions in contravention of the statutes is subject to suspension, revocation or refusal to renew by your Board.

The question now arises whether “licensed real estate broker or licensed real estate salesman” refers to brokers and salesmen duly licensed either in Ohio or another state of the Union, or only to brokers and salesmen licensed by the Ohio State Board of Real Estate Examiners.

The act under authority of which your board issues licenses contains provisions for the issuance of licenses to non-residents of Ohio as evidenced by Section 6373-41, Ohio General Code, which provides as follows:

“Licenses may be issued under this act to non-residents of this state and foreign corporations, subject to all the provisions of this act and to the following special and additional requirement:

The licensee, if a broker, shall maintain an active place of business in this state or in another state by which he is originally licensed, and

Every non-resident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of a process or pleading authorized by the laws of this state on the secretary of the state board of real estate examiners, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if due service had been made upon said

applicant in the state of Ohio. The instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the secretary of the board, it shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which said process or pleadings are directed."

Also it should be noted that such licenses are issuable without examination under the conditions set forth in Section 6373-30, Ohio General Code, which provides in part as follows:

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Provided further, however, that the board of real estate examiners may waive the requirement of examination in the case of an application from a non-resident real estate broker of those states having similar requirements, under the laws of which, similar recognition is extended to licensed real estates brokers and real estate salesmen of this state.

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Referring to the last paragraph of the letter from the West Virginia Real Estate Commission above set out, it will be noted that it was suggested "that some reciprocal agreement might be worked out that would be to our mutual advantage". In connection therewith, it is my opinion that no such agreement between the West Virginia Real Estate Commission and your Board could be entered into for the reason that no authority therefor exists under our statutes. It is well settled that an administrative board is a creature of statute and possesses only such powers as are expressly conferred upon it by statute and such implied powers as are necessary to carry into effect those powers expressly granted. For example, Sections 6306 and 6306-1, General Code, which are part of the motor vehicle laws of Ohio contemplate and specifically provide for reciprocal agreements between the State of Ohio and the proper authorities of adjoining states in connection with the administration and enforcement of such laws. No such statutes exist with reference to the powers of your Board.

Nevertheless, it seems to me that the desired result could be obtained under that portion of Section 6373-30, above quoted, which permits your

Board to waive the requirement of examination from a non-resident real estate broker of those states having similar requirements and extending similar recognition to licensed brokers and salesmen of Ohio, providing of course, the non-resident applicant complies with the mandatory requirements of Section 6373-41, *supra*.

Due to the fact that I am not familiar with the provisions of the laws of the State of West Virginia relating to real estate brokers and salesmen, it is impossible for me to state categorically whether or not a licensee of said state may, upon application to your Board, be given consideration under the provisions of Section 6373-30, *supra*.

Reading the Ohio act as a whole, it appears that the Legislature intended that commissions and fees might be divided only between persons licensed by the Ohio State Board of Real Estate Examiners to do business in this state. One who receives a portion of a commission paid in connection with the sale, etc. of Ohio real estate is directly interested in such property and must, therefore, possess an Ohio license. To hold otherwise would be to lessen the protection to the public which the real estate licensing law affords.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that it is unlawful for any duly licensed Ohio real estate broker to divide a commission or fee received for the performance of any of the acts specified in Section 6373-25, Ohio General Code, with any person who is not a real estate broker or real estate salesman duly licensed as such by the Ohio State Board of Real Estate Examiners.

Respectfully,

THOMAS J. HERBERT,
Attorney General.