

Your inquiry as to the issuance of notes for the aforesaid purposes, by a board of library trustees, must, in view of the foregoing, necessarily be answered in the negative, since the Uniform Bond Act has provided the complete machinery for the issuance of notes, as well as bonds.

Coming now to the question of the authority of a board of library trustees to place a mortgage on property held by such board, there is no authority for such a procedure, either legislative or constitutional, in the State of Ohio. The only authority for the issuance of mortgage bonds by a subdivision of the State, is the authority contained in Section 12 of Article XVIII of the Ohio Constitution, wherein it is provided that municipalities may issue mortgage bonds upon a public utility.

Specifically answering your questions, I am of the opinion that a board of trustees of a public library of a city school district has no authority to issue bonds, notes or mortgage bonds for the purpose of purchasing land and erecting library buildings thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

870.

APPROVAL, BONDS OF MAHONING COUNTY—\$22,000.00.

COLUMBUS, OHIO, September 16, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

871.

REAL ESTATE SALESMAN—NON-RESIDENT—APPLICANT FOR OHIO
LICENSE—REQUIRED TO FILE IRREVOCABLE CONSENT TO
SERVICE IN SUITS.

SYLLABUS:

The requirement as to filing an irrevocable consent, as provided in Section 6373-41, General Code, applies to every non-resident applicant for a license as real estate salesman as well as to every non-resident applicant for a license as real estate broker.

COLUMBUS, OHIO, September 16, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Section 6373-41, General Code of Ohio, relating to non-resident requirements for a real estate license is 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 any 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.

It seems clear from this section that a broker shall file an irrevocable consent that suits and actions may be commenced against him in a proper court of any county in this state in which a cause of action may arise, etc.

Does this requirement apply to a non-resident salesman applying for a salesman's license?

In the event that a non-resident salesman applying for a license is not required by this section to file an irrevocable consent, is it within the power of the board under Section 6373-33, General Code, to make rules and regulations requiring such non-resident salesman to file such consent?"

The real estate brokers' law, of which the section quoted is a part, provides for licensing real estate brokers and real estate salesmen as therein defined. Section 6373-26, General Code. Undoubtedly the section quoted in your letter is applicable to real estate brokers who are non-residents of Ohio. Whether or not the phrase "every non-resident applicant" as used in the third paragraph of the section is also applicable to non-resident salesmen, however, is not so clear.

Under Section 6373-25, General Code, a real estate salesman is one employed by a licensed broker. As stated by my predecessor, in Opinions of the Attorney General, 1928, Volume IV, page 2813:

" * * * an individual is employed merely as a salesman for a broker, the responsibility in connection with particular real estate transactions rests primarily with the broker for the conduct of his salesman. The salesman is the agent or employe of the broker and, as such, is acting for the broker in connection with real estate transactions. *So far as the things done in connection with real estate transactions are concerned, the act of the employe is the act of the principal.* It is accordingly not required that any separate bond be provided by a real estate salesman, his acts being covered by the provisions of the bond of the broker." (Italics the writer's.)

I concur in this view to the effect that the failure to provide that real estate sales-

men shall be bonded is indicative of a legislative intent that the principal shall be primarily liable for the real estate transactions of an agent and for such agent's conduct. However, the phrase "every non-resident applicant" is itself all inclusive so far as agents are concerned, and there may be many instances in which it would not only be desirable but proper practice to join the agent as party defendant in an action against a principal.

The second paragraph of the section provides that the licenses, if a broker, shall maintain an active place of business, and the last sentence of the section provides that any process or pleading served upon the secretary of the board shall be forwarded to the main office of the applicant against which said process or pleading is directed. It could be said that this reference to the main office of the applicant is to the second paragraph of the section requiring that an active place of business be maintained, and in view of the fact that there is no requirement to the effect that an agent shall maintain a main office, therefore the requirement as to filing such consent is applicable only to real estate brokers.

While it is true that the statute makes no provision as to a main office of a licensed real estate salesman, it is nevertheless provided in Section 6373-32, General Code, referring to salesmen's applications, that such applications shall contain "such other information as the board of real estate examiners may require in the form of application prescribed by it." The board clearly has authority to require salesmen to designate a place as a main office or as an active place of business. It is true that the section also provides that the instrument containing such consent shall be authenticated by the seal of the applicant, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise, but this provision is not necessarily indicative of an intent that the consent is to be executed by a broker only. The broker may be an individual, and as such would not be exempt from filing this consent by virtue of this sentence. The following sentence requiring a certified copy of the resolution authorizing a proper officer to execute such consent makes an exception as to individuals.

In view of the foregoing, I am inclined to the view that, although the language of the section under consideration is not at all clear with reference to the question submitted, the phrase as above indicated "every non-resident applicant" is all inclusive, and that the requirement as to filing an irrevocable consent, as provided in Section 6373-41, General Code, applies to every non-resident applicant for a license as real estate salesman as well as to every non-resident applicant for a license as real estate broker.

An answer to your second question is accordingly unnecessary.

Respectfully,

GILBERT BETTMAN,
Attorney General.