

5856.

MEMORIAL PARK—MAY COMPENSATE CHURCH WHICH
SELECTS BURIAL LOTS IN SUCH CEMETERY—OFFI-
CERS OF CHURCH MAY NOT SELL LOTS WITHOUT LI-
CENSES.

SYLLABUS:

1. *It is not unlawful for a memorial park, which is operating a cemetery, as a part of the expense of such operation, to pay to a church which selects burial sections in such cemetery a commission on the sale of lots made by or through such church.*

2. *If such church through its officers or agents sells, offers to sell or negotiates the sale or exchange of cemetery lots for such memorial park, such act would constitute a violation of Section 6373-26, General Code.*

COLUMBUS, OHIO, July 17, 1936.

HON. ALBERT A. BENESCH, *Director of Commerce, Columbus, Ohio.*

DEAR SIR: I acknowledge receipt of your communication which reads as follows:

“Section 6373-25, paragraph 2, of the General Code provides as follows: ‘Real estate *salesman* means a *person* who for a commission, compensation or valuable consideration, is employed by a licensed broker to sell, etc.’

It will be noted that paragraph 1 of the same section defines a real estate *broker* as a *person, firm or corporation*, etc.

Section 6373-25, paragraph ‘e’ exempts from the operation of the law any person or persons employed, etc., when the compensation therefor does not exceed \$10.00 for each buyer, etc.

Section 6373-42, sub-section 5, provides for revocation or refusal of license where the licensee ‘has paid commissions or fees to or divided commissions or fees with anyone not licensed as a real estate salesman.

It will be noted that Section 6373-25, paragraph 1, differs from 6373-25 in that the term ‘real estate broker’ includes persons, firms and corporations, whereas the term ‘real estate salesman’ apparently includes persons only.

A memorial park of Cleveland is operating a cemetery association for profit, and in connection with sales of its lots it has been in the practice of paying churches which select burial sections in the cemetery 10% of the sale price of each lot made

by the church or through its cooperation. I should like to have your opinion as to whether or not such a practice constitutes a violation of the provisions of Section 6373-25, paragraph 'e' and/or 6373-42, section 5."

The pertinent parts of the Real Estate Brokers Law are as follows: Section 6373-25, General Code.

" '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.

(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;

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(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; nor shall the term 'real estate salesman' include or mean any person or persons employed or engaged by a licensed real estate broker for securing or furnishing prospective buyers when the compensation therefor does not exceed ten dollars for each such buyer and provided, however, that a sale to any such prospective buyer must be consummated by a licensed real estate broker or his licensed salesman.

One act for a compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell, or exchange real estate or leasing, or renting, or offering to rent real estate, except as herein specifically excepted shall constitute the person, firm or corporation, performing, offering, or attempting to perform any of the acts enumerated herein, a real estate broker or a real estate salesman within the meaning of this act."

Section 6373-26, General Code.

“No person, firm 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 (G. C. Sections 6373-25 to 6373-51).”

Section 6373-42, General Code.

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The state board of real estate examiners may also suspend or revoke or refuse to renew the license of any licensee who at any time has:

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

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You state that the term “real estate salesman” apparently includes persons only. The word “person” as used in various statutes has been held to include corporations. *Allen v. State*, 10 O. S., 287; *Garder v. Commissioners*, 16 O. S., 353; *Norris v. State*, 25 O. S., 217; *Springfield v. Walker*, 42 O. S., 543; *Insurance Co. v. Hard*, 59 O. S., 248.

While a corporation is a person, whether a corporation is included within the meaning of the word “person” as used in a statute or whether such word is limited in its application to a natural person depends upon the sense in which it is used in that particular statute. The following is stated in 14 C. J., 64:

“Since a corporation is for corporate purposes a legal entity and an ideal person in the law, it is regarded as a ‘person’, ‘party’, ‘defendant’, ‘debtor’, ‘creditor’, etc., within the meaning of contract and statutory or constitutional provisions, if it is within the reason and purpose of such provisions and is not expressly or impliedly excluded from their operation; and sometimes this rule is expressly declared by statute.”

The fact that the legislature has expressly used the term “person, firm or corporation” with respect to real estate brokers and has excluded the words “firm or corporation” in defining real estate salesman, would imply that a real estate salesman as defined by this act is limited to a

natural person. Furthermore, Sections 6373-29, 6373-30 and 6373-31 provide the manner in which firms and corporations can qualify for a license to act as real estate brokers but Section 6373-32 makes no such provision with reference to licenses for real estate salesmen.

The acts of the memorial park referred to in selling its lots would apparently come within the exemptions of Section 6373-25, General Code, since it is apparently acting with reference to real estate or an interest therein owned by it or as an incident to the management of such property and the investment therein. Section 6373-42, General Code, authorizes the Board of Real Estate Examiners to suspend or revoke the license of any real estate broker or salesman who has paid commissions or fees to anyone not licensed as a real estate broker or salesman. The payment of such commission or fees obviously applies only to payments by licensed real estate brokers or salesmen and would not apply to the payments by the memorial park which does not and is not required to have a license. Consequently, I am of the view that it would not be unlawful for such memorial park to pay to churches a commission for the sale of its lots as a part of the expense of the operation of its cemetery.

Your letter does not state definitely what acts are being performed by the churches through their officers or agents. If these acts consist of selling, offering for sale or negotiating the sale or exchange of cemetery lots for the memorial park, such acts would in my opinion be a violation of Section 6373-26. The exemption contained in Section 6373-25 that the term "real estate salesman" shall not include or mean any person or persons employed or engaged by a licensed real estate broker for securing or furnishing prospective buyers when the commission therefor does not exceed ten dollars for each buyer, would not apply to persons who are not employed or engaged by a licensed real estate broker.

Answering your question, therefore, I am of the opinion that:

1. It is not unlawful for a memorial park, which is operating a cemetery, as a part of the expense of such operation, to pay to a church which selects burial sections in such cemetery a commission on the sale of lots made by or through such church.

2. If such church through its officers or agents sells, offers to sell or negotiates the sale or exchange of cemetery lots for such memorial park, such act would constitute a violation of Section 6373-26, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.