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REAL ESTATE EXAMINERS, STATE BOARD OF—CAN NOT EXACT FROM APPLICANT FOR BROKER'S LICENSE, PLEDGE TO DEVOTE ALL OF HIS TIME TO REAL ESTATE BUSINESS AS CONDITION PRECEDENT TO ADMITTANCE FOR EXAMINATION TO OBTAIN LICENSE.

SYLLABUS:

The state board of real estate examiners can not exact from an applicant for a real estate broker's license a pledge to devote all of his time to the real estate business as a condition precedent to admitting him to examination.

Columbus, Ohio, April 22, 1946

State Board of Real Estate Examiners

Columbus 15, Ohio

Gentlemen:

I am in receipt of your request for my opinion which reads as follows:

"It has become sort of a prevailing custom with our Board to interrogate applicants to take the real estate broker's examination, as to whether they intend devoting full time to the real estate business. This occurs frequently where attorneys are making application to take the broker's examination. They are asked to come before the Board and are questioned as to whether they intend giving up their law practice to engage in the real estate business; if not, the Board has taken the function upon themselves to hold up their application.

This office is embarrassed almost daily by complaints from people who have been denied the right to take the examination on the above grounds. We feel that we should have an opinion from the Attorney General as to whether under the law, we can exact from an applicant a pledge to devote all of his time to the real estate business. Probably fifty percent of the brokers in Ohio we find are engaged in selling insurance or in some other occupation. It seems a moot question whether any law can provide what a broker will do with his license after it has been issued."

The conditions precedent to admission to examination of an applicant for license as real estate broker are set forth in Section 6373-30, General Code, which provides in part as follows:

“If the state board of real estate examiners is satisfied that the applicant for broker’s license * * * is honest, truthful and of good reputation, is at least twenty-one years of age and a citizen of the United States of America, and has had at least one year’s experience full time in real estate business or service, or has been associated as a real estate salesman with a licensed real estate broker for one year, or in lieu of such experience or service, furnishes a certificate that he has passed a real estate course at a recognized educational institution, or has had other real estate experience equivalent thereto at the discretion of the board of real estate examiners, and evidences such experience by detailed explanatory affidavit to establish the nature of such real estate experience, it shall admit the applicant * * * to an examination * * *.”

By virtue of the foregoing section the state board of real estate examiners is required to determine whether or not certain conditions established by the legislature have been satisfied by the applicant for admission to examination. In making this determination the board is clothed with discretion. At that moment when it becomes satisfied that the applicant for license as a real estate broker is honest, truthful, of good reputation, at least twenty-one years of age, a citizen of the United States of America, and possessed of the experience or educational requirements set forth in Section 6373-30, General Code, it becomes the duty of the board, in obedience to the mandate of the legislature, to “admit the applicant * * * to an examination”.

A pledge by the applicant to devote all of his time to the real estate business is not one of the statutory conditions which gives rise to the duty of the board to admit an applicant to examination, nor is it in any way related to those standards which the legislature has seen fit to establish. Admitting for the purposes of this discussion that a requirement of this type could be made within the pale of the constitution by the board under authority delegated to it by the legislature, I find that the Ohio General Assembly has not delegated to the state board of real estate examiners any such authority. The law enacted by the General Assembly with respect to the admission of persons to a broker’s examination is complete in itself. All that is required to be done by the board is to find the existence of certain facts. To these findings of fact the law enacted by the legislature is applied and enforced. It is not within the province of the state board of real estate examiners to add another requirement

to those already established by the legislature. The General Assembly and not the state board of real estate examiners possesses the power to enact legislation. Constitution of Ohio, Article II, Section I.

Accordingly, in specific answer to your inquiry, it is my opinion that the state board of real estate examiners can not exact from an applicant for a real estate broker's license a pledge to devote all of his time to the real estate business as a condition precedent to admitting him to examination.

Respectfully,

HUGH S. JENKINS,
Attorney General