

I have therefore concluded it will be unnecessary for the Board of Real Estate Examiners to consider the charter authority of trust companies or banks with trust powers, to engage in the business of handling property for others as agents in such a way as to make them amenable to the real estate brokers' law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

950.

REAL ESTATE—PERSON, FIRM, OR CORPORATION MUST QUALIFY AS DEALER UNDER SECTIONS 6373-15, ET SEQ., IF THEY DEAL IN REAL ESTATE LOCATED OUTSIDE STATE OF OHIO.

SYLLABUS:

Any person, firm or corporation, dealing within this state in real estate located elsewhere, must qualify as a dealer under the provisions of Sections 6373-15, et seq., of the General Code, and must also secure a license as a real estate broker and such real estate salesman's licenses as may be necessary under the provisions of Sections 6373-25 to 6373-51 of the General Code. In such a case it is necessary that proper bond be given both to the commissioner of securities and the board of real estate examiners, as provided by law.

COLUMBUS, OHIO, September 3, 1927.

HON. CYRUS LOCHER, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

“The securities law provides that anyone selling foreign real estate, that is real estate located outside of Ohio, in Ohio, must have the same qualified in the Division of Securities, and also get a dealer's license. The so-called real estate law, creating the Board of Real Estate Examiners, provides that non-residents selling real estate in Ohio must have a real estate broker's license.

Please inform us whether it would be necessary for a firm selling real estate in Ohio, that is located in another state, to qualify both under the so-called Blue Sky Law and under the Real Estate Law, before the same can be legally sold in Ohio, and whether it will be necessary for the firm to file a bond both in the Division of Securities, for the license, and with the Board of Real Estate Examiners, for a real estate license.”

As you state, the securities act requires that no one shall within this state deal in real estate not located in Ohio unless he be licensed as a dealer, as provided in Section 6373-3 of the General Code. It further provides that no real estate located outside of Ohio shall be dealt in unless it is certificated. These provisions are found in Section 6373-15, which is as follows:

“No person or company, unless licensed in the manner and under the conditions applicable thereto hereinbefore provided for dealers, shall, within this

state deal in real estate not located in Ohio of which he is not the actual and bona fide owner and unless the 'commissioner' shall issue his certificate as provided in the following section, and prior to such issuance there shall, together with a filing fee of five dollars, be filed with the 'commissioner' an application for such certificate, and a written statement of the applicant containing a pertinent description of the real estate the sale of all or a part of which is sought to be made, the nature and source of the title of the owner thereto, and the amount or value and the nature of the consideration paid or allowed by him therefor, it shall, within this state, be unlawful:

(a) For any corporation, association or co-partnership doing business under any name other than the name or names of such person or of all the members of such association or co-partnership to sell any real estate not located in Ohio;

(b) For any person or company engaged in the business of dealing in real estate to sell or offer for sale any such real estate, the title to which is or is represented to the purchaser to be in the name of a corporation or unincorporated company, or of a person doing business under a fictitious name.

This section shall apply where the title to such property is held in the name of a trustee for any corporation or for any such described person or company; but it shall not be deemed to prohibit the disposal by an owner of his own property, in good faith and not for the purpose of avoiding the provisions of this act, where the transaction is not one of repeated transactions of a similar nature, performed as a part of the business of dealing in real estate; nor shall it be deemed to prohibit a railroad company having an immigration bureau or department from advertising either directly or through its accredited representatives, the fact that there are along its route lands for colonization or sale; provided that such advertising be not of specific tracts of real estate, and not for the purpose of avoiding the provisions of this act."

While the language of this section is not at all clear, it is manifest at least that all dealers in real estate not located in Ohio must be licensed as brokers under the securities law, irrespective of whether such dealers are residents of Ohio or not. It also apparently makes mandatory the certification of the land in question irrespective of whether the dealer is the owner of the land, unless the disposal by the owner is in good faith and not for the purpose of avoiding the provisions of the act, and the transaction is not one of repeated transactions of a similar nature performed as a part of the business of dealing in real estate.

Where, therefore, a dealer who is not a resident of Ohio, deals within this state in real estate not located herein, and of which he is not the actual and bona fide owner, the plain language of the statute is that he must qualify as a dealer under Sections 6373-3, et seq., of the General Code. That section requires that each dealer shall execute and file a bond to the State of Ohio in such sum as the commissioner may require, but not to exceed \$2500.00, with such surety as the commissioner requires, conditioned upon the faithful observance of all the provisions of the securities act, and indemnifying any purchaser of lands from such dealer or agent who suffers a loss by reason of misrepresentations of sale of such land by such dealer or agent.

Your question is whether a dealer of this character must also qualify under the new real estate license law.

The provisions of law relative to the licensing of real estate brokers are found in Sections 6373-25 to 6373-51, inclusive, of the General Code. Section 6373-25 is, so far as pertinent, as follows:

“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.”

Obviously a dealer such as you describe comes within the definition of the term “real estate broker.” It is also apparent that any employee of a broker, engaged in dealing in real estate not located in Ohio, comes within the definition of the term “real estate salesman.” While this section does not limit the applicability of the definitions therein set forth to persons dealing in real estate in Ohio and, therefore, in the absence of any other express provisions, these definitions might well be said to comprehend any one dealing in real estate wherever located, so long as the business is transacted within this state, nevertheless there is specific provision for the extension of its applicability to non-residents, under the provisions of Section 6373-41, of the General Code. That section 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 (G. C. Sections 6373-25 to 6373-51) 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.”

In making the provisions of the act applicable to non-residents specifically, this section also necessarily requires the filing of a bond, as in the case of local brokers. This requirement is found in Section 6373-35, as follows:

“No real estate broker’s license shall be issued until the grantee thereof shall have executed and filed a bond to the State of Ohio in the sum of \$1,000 and with such surety as the real estate examiners may require. Such bonds shall be filed with the state board of real estate examiners and kept by them

in their offices. Such bond shall be conditioned upon the faithful observance of all the provisions of this act and shall also indemnify any person who may be damaged by a failure on the part of the applicant for a real estate broker's license to conduct his business in accordance with the requirements of this act (G. C. Sections 6373-25 to 6373-51). Any person claiming to have been damaged by any misrepresentation or fraud on the part of a real estate broker or by reason of the violation of the terms of this act, may maintain an action at law against the broker making such misrepresentations or perpetrating such fraud or violating the provisions of this act, and may join as parties defendant the sureties on the bonds herein provided for. Such bonds shall be in the form prescribed by the board of real estate examiners and approved by them."

While there is an apparent duplication of licenses in the instance you suggest, I do not feel warranted in concluding that the legislature did not have this in mind. The bond given to the commissioner of securities under Section 6373-3 of the Code and that given to the real estate examiners under Section 6373-35, would seem to comprehend protection against exactly the same things. I do not feel, however, that I would be justified in holding that giving one of the bonds should be sufficient. The legislature has spoken and it is quite possible that, in its judgment, it would be wise to provide additional security where the property dealt in is not located in this state.

I am therefore of the opinion that any person, firm or corporation, dealing within this state in real estate located elsewhere, must qualify as a dealer under the provisions of Sections 6373-15, et seq., of the General Code, and must also secure a license as a real estate broker and such real estate salesmen's licenses as may be necessary under the provisions of Sections 6373-25 to 6373-51 of the General Code. In such a case it is necessary that proper bond be given both to the commissioner of securities and the board of real estate examiners, as provided by law.

Respectfully,

EDWARD C. TURNER,
Attorney General.

951.

VILLAGE COUNCIL—EMPLOYMENT OF LEGAL COUNSEL—CONTINGENT CONTRACT TO OBTAIN CLAIM FROM GENERAL ASSEMBLY IS VOID.

SYLLABUS:

1. *Contracts for the employment of legal counsel for a village must be authorized by and in accordance with an ordinance or resolution of the village council which must be duly passed and entered upon the journal of proceedings of that body.*

2. *A contract of employment by a village with an attorney at law, for the purpose of obtaining an allowance by the General Assembly of a claim, in which contract the payment for the services rendered is contingent upon the allowance of such claim, is void under Anti-Lobby Law.*

COLUMBUS, OHIO, September 3, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :—Permit me to acknowledge receipt of your request for my opinion, as follows :