

Note from the Attorney General's Office:

1927 Op. Att'y Gen. No. 27-0960 was overruled in part by 1987 Op. Att'y Gen. No. 87-052.

Section 5521 of the General Code. The legislature having spoken at a later date in Section 80, it is my opinion that the provisions of this section superseded and repealed by implication the provisions of Section 5521 of the General Code.

In the specific case which you present, you state that the certificate of dissolution is accompanied by a certificate from the tax commission and also a certificate from the county treasurer showing that all taxes listed in the name of the company are paid to date. The treasurer's certificate undoubtedly has reference only to those taxes which normally appear upon his duplicate and does not include those taxes which have accrued but payment of which is not yet due. You have not furnished me a copy of the certificate of the Tax Commission, so I am unable to advise you whether this certificate is in such form as to warrant you to accept the filing of the certificate of dissolution. From what I have said, however, I believe that you have sufficient information to determine whether or not the certificate in the present instance is in the form required by Section 80 of the general corporation act.

It may be said in passing that the Tax Commission, in performing its duty with respect to the security for the payment of all classes of taxes, should be governed in each instance by the particular facts involved. Real property taxes are, of course, a lien upon the property and ordinarily it would not appear to be necessary to take security in addition to that furnished by the property itself. At the same time it is possible to conceive of exceptional cases in which it would be advisable to secure security which could be more easily liquidated than the ordinary lien through the process of sale for delinquent taxes. Franchise and excise taxes also constitute liens on real property, subject to limitations as to time and priority, which need not be here discussed, whereas there is no specific lien as to personal taxes. The Commission must use its best judgment, taking care that ample provision is made for the payment of all kinds of taxes.

Summarizing my conclusions, I am of the opinion that before the Secretary of State can accept the certificate of dissolution filed by the directors of a corporation, such certificate must be accompanied by (1) receipts showing the payment of all franchise and other taxes, fees and penalties due at the time of the filing of the certificate of dissolution; and (2) a certificate from the Tax Commission (which may include a statement of the receipt of excise and franchise taxes already paid) showing that the corporation has given security satisfactory to the commission for the payment of all taxes of every character accruing against the corporation by reason of its property owned or business done prior to the date of the filing of the certificate of dissolution.

Respectfully,

EDWARD C. TURNER,

Attorney General.

960.

REAL ESTATE—LICENSE FOR AUCTIONEER TO SELL LAND.

SYLLABUS:

Any auctioneer who offers for sale real estate at auction is required by the provisions of Sections 6373-25, et seq., General Code, to secure a license as a real estate

broker, irrespective of the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto.

COLUMBUS, OHIO, September 7, 1927.

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

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

“Several companies who act as real estate brokers, and are engaged in selling property at auction, for compensation, have made inquiry whether it will be necessary to have the auctioneers secure a broker’s or salesman’s license in addition to the customary auctioneer’s license.”

The licensing by the state of auctioneers is done under authority of Sections 5866 et seq., of the General Code. Section 5866 is as follows:

“A person shall not exercise the occupation of auctioneer or sell by public auction, vendue or outcry, any property or effects, except utensils of husbandry, household furniture, real estate, produce, horses, sheep, hogs and meat cattle, without a license as herein provided. Whoever exercises such occupation or sells or attempts to sell, by public vendue, auction, or outcry, any property or effects, except as herein provided, without such license, shall forfeit and pay not more than five hundred dollars nor less than one hundred dollars, to be recovered in the name of the state.”

You will observe that by the specific language of this section it is unnecessary to secure an auctioneer’s license to sell real estate. Manifestly, therefore, the licensing section has no application to sales of real estate at auction and the fact that, by reason of other activities of the auctioneer, he may be amenable to the auctioneer’s license law and so must secure a license, does not extend the licensing provision to his activities in connection with the sale of real estate.

The real estate broker’s license law is of general application and the terms of Section 6373-25 of the General Code are clearly applicable to sales by auctioneers. The definitions of real estate broker and real estate salesman are manifestly broad enough to cover auctioneers and their employes. Those definitions, as found in Section 6373-25, are 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.”

None of the exceptions contained in the later language of the above section, which I have not quoted, is applicable and I am therefore of the opinion that any auctioneer who offers for sale real estate at auction is required by the provisions of

Section 6373-25, et seq., of the General Code to secure a license as a real estate broker, irrespective of the fact that such auctioneer is already licensed as an auctioneer under the provisions of law applicable thereto.

Respectfully,
EDWARD C. TURNER,
Attorney General.

961.

APPROVAL, ARTICLES OF INCORPORATION OF THE LAKE TOWNSHIP MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, September 7, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the amendment to the articles of incorporation of the Lake Township Mutual Insurance Company, with my approval indorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

962.

APPROVAL, BONDS OF THE VILLAGE OF FAIRVIEW, CUYAHOGA COUNTY, OHIO—\$66,880.00.

COLUMBUS, OHIO, September 7, 1927.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

963.

FRANCHISE TAX—REFUNDS OF OVER-PAYMENTS CANNOT BE MADE IN THE ABSENCE OF SPECIFIC APPROPRIATION THEREFOR.

SYLLABUS:

Refunds cannot be made of over-payments of state franchise taxes in the absence of specific appropriation therefor by the legislature.

COLUMBUS, OHIO, September 7, 1927.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows: