

through nonfeasance or misfeasance, signed personally by the principal as well as by the surety or sureties. The proposed bankers' blanket bond and position schedule bond, above referred to, are not bonds in the sense of the term as used in the statute. They are nothing more or less than policies of insurance to indemnify the insured against loss resulting through certain contingencies. I can see no objection to a building and loan association protecting itself against loss by making a contract of insurance such as is covered by the above "bonds". However, your attention is directed to the portion of Section 9670, above quoted, which provides that the directors of a building and loan association shall be individually liable for any loss to members caused by their neglect to comply with the provisions of this section. While the proposed bonds purport to insure the building and loan association against losses resulting from a great many contingencies, it is entirely possible that losses may occur which are not covered thereby. In such event, clearly the directors of the building and loan association would be individually liable for any loss caused by their failure to require the officers and employees of the association to give the bond required by Section 9670, General Code.

In view of the foregoing and answering your question specifically, I am of the opinion that the position schedule bond and the bankers' blanket bond, above referred to, are not such bonds as are prescribed by Section 9670, General Code, and that the directors of a building and loan association who enter into a contract with a surety company under the terms of such bonds are individually liable for losses which may occur and which are not covered by such bonds.

Respectfully,  
 EDWARD C. TURNER,  
*Attorney General.*

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3105.

REAL ESTATE BROKER'S LICENSE—CORPORATION'S APPLICATION  
 MUST CONTAIN NAME OF PRESIDENT—EXAMINATION OF ANY  
 OFFICER—WHEN LICENSE TO ISSUE.

**SYLLABUS:**

*Where a corporation makes application for a license as a real estate broker, the name of the president of the corporation must appear in the application, but such president need not pass the examination and a license shall issue to the corporation in the event that any officer named in the application is successful in passing the examination.*

COLUMBUS, OHIO, January 5, 1929.

*State Board of Real Estate Examiners, Rowlands Bldg., Columbus, Ohio.*

GENTLEMEN:—This will acknowledge the receipt of your recent communication, as follows:

"At a meeting of this Board December 18, 1928, the following resolution was passed:

RESOLUTION  
IN THE MATTER OF APPLICATION OF  
THE PONTIAC IMPROVEMENT COMPANY.

It was moved by Mr. Wood and seconded by Mr. Smith that the brief of the Pontiac Improvement Company, together with the facts relating thereto, be referred to the Attorney General of Ohio, with the request that he reconsider and amplify his opinion No. 831, August 5, 1927, relating to the necessity of licensing the president of an applicant corporation, and that a copy of this resolution be sent to the Pontiac Improvement Company.

Upon roll call the vote was AYE—

Mr. Jacoby

Mr. Wood

Mr. Smith

NAY None.

We are enclosing herewith the brief referred to in said resolution."

The brief accompanying your communication relates to the question whether the president of a corporation seeking a real estate broker's license must be qualified by passing the examination provided by the real estate broker's license law prior to the issuance of a broker's license to the corporation. In the brief it is stated that the board has taken the position that the president of such a corporation must be "active", and, therefore, must be qualified before a real estate broker's license can be issued to the corporation. It is further stated that the conclusion of the board is based upon its interpretation of the language used in Opinion No. 831 of this department, addressed to the board and found in Opinions of the Attorney General for 1927, at page 1463. In this opinion I had under consideration, among other things, the following inquiry:

"QUESTION—Will it be necessary for all the officers to first be named by the corporation and make application for a broker's license before they can legally make application for a salesman's license, or may they make application for a salesman's license in the first instance?"

My conclusion is sufficiently set forth in the second branch of the syllabus, as follows:

"2. The application of a corporation for a broker's license need not name any of its officers other than the president of such corporation and officers not named therein may make application for licenses as real estate salesmen."

This conclusion was predicated upon the language of Section 6373-29, General Code, which, in so far as pertinent to your inquiry, is as follows:

\* \* \*

If applicant is a firm, the names of all the members thereof must also be stated, and if it is a corporation, those of its president and of each of its officers to whom the license is to apply, and the certificate and recommendation herein required shall be made and given with respect to all persons whose names are so shown."

In order to answer the question which you previously asked, it was also necessary to give consideration to Section 6373-31, General Code, the last sentence of which is as follows:

“ \* \* \* If all the officers named in the application of a corporation pass the examination, a license shall be issued to such corporation; if any officer so named passes, and all or any of the other named officers fail, the corporation shall be entitled to the license applied for, and the officers who fail shall be entitled to become applicants for real estate salesman's licenses. \* \* \* ”

From a reading of the portions of the sections above quoted, the conclusion was obvious that the name of the president must be contained in the application for a corporate license. If the corporation desires that the license apply to officers other than the president, the names of such additional officers must be inserted in the application.

The conclusion reached in the prior opinion was that the president of the corporation must, in any event, be named in the application and that it was unnecessary to name any other officer. Section 6373-31 of the Code authorizes other officers named in the application, but failing to pass the examination for a broker's license, to become applicants for a salesman's license. The statute is silent as to what happens in the event that these officers, or any of them, so failing to pass the examination for brokers, also fail to obtain a real estate salesman's license. The specific language of Section 6373-31, General Code, however, is to the effect that the corporate license shall issue if any officer passes, and the conclusion is obvious that other officers not named, or those failing to secure a salesman's license, cannot participate actively in the prosecution of the business; that is to say, such officers would apparently be precluded from dealing with the public in the business of a real estate broker, as defined by statute, as the representatives of the corporation. In my opinion, however, this would not preclude such officers from serving as officers of the corporation in other respects.

Coming to the specific question now raised, it is apparent that your interpretation of the statutes under consideration is based upon my conclusion that the president must be, in any event, named in the application for a corporate license. Whether the naming of the president in the application is for the purpose of indicating that such officer intends taking the examination or merely for the purpose of informing the board of the name of the responsible head of the organization is a question which becomes academic in view of the conclusion which I have reached. While manifestly the president's name must appear in the application, it is equally clear that the provisions of Section 6373-31 of the Code require the issuance of a corporate license in the event that any officer named in the application passes the examination. In other words, although the president may fail, either through inability to pass or refusal to present himself for the examination, if another officer of the corporation is successful, the corporation license shall issue. It is therefore immaterial whether the president refuses to take the examination or fails to pass it. The right of a corporation to a license is not prejudiced thereby so long as another officer named in the application is successful.

It is my view that the president need not be active in the prosecution of the business of the corporation, although he serve as its head, so far as its organization and internal management are concerned. The purpose of the act is to have those individuals who deal with the public, either individually or as the representatives of a firm or corporation, properly qualify as real estate brokers. Only such

officers of a corporation who successfully pass the examination can actively prosecute the corporate business of buying and selling real estate for others and performing the other acts defined by Section 6373-25, as constituting the one so engaged as "real estate broker". It may well be that an individual may be heavily interested financially in a corporation engaged in the real estate brokerage business without pretending to have experience therein or the time to devote attention thereto. In such an event, it is natural that if the interest be a predominant one, the individual would desire to be the president of a corporation, at the same time leaving the active management of its affairs to others.

You are, of course, familiar with the fact that Section 6373-31 of the Code, in the portion thereof which I have not quoted, makes specific provision with respect to an inactive partner in a firm. It is my conclusion that the Legislature intended that a similar rule should apply to officers of corporations seeking licenses as real estate brokers.

Accordingly, by way of specific answer to the question raised, I am of the opinion that where a corporation makes application for a license as a real estate broker, the name of the president of the corporation must appear in the application, but such president need not pass the examination and a license shall issue to the corporation in the event that any officer named in the application is successful in passing the examination.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

3106.

CONSTABLE—MUST BE ELECTOR OF TOWNSHIP IN WHICH HE IS APPOINTED.

*SYLLABUS:*

*A constable appointed to fill a vacancy under the provisions of Section 3329, General Code, or a special constable appointed under the provisions of Sections 3331 or 1732, General Code, must have the qualifications of an elector in the township in which such appointment is made, or said appointment is invalid.*

COLUMBUS, OHIO, January 5, 1929.

HON. D. H. PEOPLES, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"As Prosecuting Attorney of Meigs County, I would like to have the opinion of your office as to whether a person can be appointed Constable in a township other than the one in which he resides, and also if he can serve civil or criminal papers in townships other than the one from which he is appointed.

This is the situation here: One of the Justices in Salisbury Township had the Trustees of Salem Township, which is not adjoining to Salisbury, appoint J. L., who lives in Salisbury Township as a Constable, and he is making no attempt to work in Salem Township, but is serving papers out of the Salisbury Township Justice's office to the exclusion of the three regularly elected Constables in Salisbury Township."