

REAL ESTATE COMMISSION:

The Secretary of the Missouri Real Estate Commission is prohibited from engaging in the real estate practice.

OPINION NO. 536

December 19, 1969



Mr. Robert T. Leonard, Chairman  
Missouri Real Estate Commission  
222 Monroe Street  
Jefferson City, Missouri 65101

Dear Mr. Leonard:

On November 21, 1969, this office received an opinion request from you asking us to interpret ". . . the legal intent of the language contained in RSMo. 339.120 as pertaining to the following language: 'He (Secretary) shall devote full time to the position'."

It is our understanding that the present Secretary of the Missouri Real Estate Commission is engaged in the real estate practice. We assume this fact in our opinion.

Section 339.120, RSMo Supp. 1967, reads in part as follows:

". . . The commission may do all things necessary and convenient for carrying into effect the provisions of this chapter, and may from time to time promulgate necessary rules and regulations compatible with the provisions. . . . The commission shall employ a secretary and such other employees as it shall deem necessary to discharge the duties imposed by the provisions of this chapter. . . ."

The Missouri legislature authorized a secretary to discharge the duties imposed by the provisions of Section 339.120 RSMo Supp. 1967, in that the commission members are not directed to spend full time in discharging the provisions of said chapter.

As noted in the opinion request, Section 339.120, RSMo Supp. 1967, requires the secretary to "devote full time to the position". In Board of Education of London Ind. Sch. Dist. v. Miller, Ky., 299 S.W.2d 626,

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petitioner instituted a mandamus proceeding to have the Board of Education accept the recommendation of the school superintendent, that petitioner be employed for the school year as both clerk and attendance officer. The Court noted that K.R.S. §159.140(1) is determinative of the issue raised by petitioner. K.R.S. §159.140(1) requires that the attendance officer shall "Devote his entire time to the duties of his office; . . ." The Court in construing that provision stated l.c. 628:

". . .The Legislature may provide that a public officer devote his entire time to his duties, whether or not the entire time of the officer is in fact required for the complete and faithful performance of his duties. Miller v. Walley, 122 Miss. 521, 84 So. 466. Our Legislature has so directed in the case of attendance officers. Regardless of where the equities may lie here, the statute speaks plainly, and its provisions are mandatory. Opal has no legal right to retain her employment in direct contravention of an express statutory provision."

In State ex rel Gray v. Miller, 105 S.W. 272, 206 Mo. 541 l.c. 541 the Supreme Court of Missouri stated:

"It is fundamental and one of the cardinal rules in the construction of statutes that the true intent and meaning of the lawmaking authority, as expressed in the language employed, should, if possible, be ascertained and declared. On the other hand, it is equally well settled that words and phrases shall be taken in their plain or ordinary and usual sense, and that it is incumbent upon the courts to construe a statute as written, without regard to the results of the construction, or the wisdom of the law as thus constructed. . . ."

In light of the above, it seems clear that the secretary of the Missouri Real Estate Commission must not engage in the real estate practice. To interpret "He shall devote full time to the position", in a different manner would be contrary to the plain, ordinary and usual meaning of the words.

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It is also felt that there is another strong and compelling reason for this conclusion. In State v. Cumpton, 240 S.W.2d 877 Mo., the Court quotes with approval from 43 Am. Jur. 81, Public Officers, §266:

"A public officer owes an undivided loyalty to the public whom he serves and he should not place himself in a position which will subject him to conflicting duties or expose him to the temptation of acting other than in the best interest of the public. . . ."

The Secretary of the Missouri Real Estate Commission is responsible as the agent of the Commission to discharge the duties imposed by the provisions of Chapter 339 RSMo. Chapter 339 RSMo. contains the body of law which regulates and limits the activities of real estate brokers and salesmen licensed to do business in Missouri. Under that law, the Secretary of the Commission is responsible for processing complaints by private persons or business entities against the acts of real estate brokers or salesmen. A person charged with this responsibility should not be a practicing realtor in that the opportunity would exist for him to quash a complaint against himself or strongly influence the handling of such a complaint. The Secretary of the Missouri Real Estate Commission must not place himself in a position which will tempt him to act in a manner contrary to the public interest. We are certain that the legislature anticipated this conflict and that the requirement to spend full time is reflective of a legislative intent to avoid possible conflicts.

In light of the above reasons, it is our opinion that the Secretary of the Missouri Real Estate Commission is prohibited from engaging either directly or indirectly in the real estate practice.

#### CONCLUSION

It is therefore, the opinion of this office that Section 339.120 RSMo Supp. 1967, and the conflict of interest law prohibits the Secretary of the Missouri Real Estate Commission from engaging either directly or indirectly in the real estate practice.

The foregoing opinion, which I hereby approve, was prepared by my assistant Alfred C. Sikes.

Yours very truly,



JOHN C. DANFORTH  
Attorney General