REAL ESTATE COMMISSION: May revoke, or suspend, on indictment although cause is still pending.

March 27, 1943

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Honorable J. W. Hobbs
Secretary
Missouri Real Estate Commission
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated March 26, 1943, which reads as follows:

> "May the Commission request an opinion, if the Commission, after holding a hearing, can suspend the license of a licensee indicted by federal authorities on serious real estate charges. The purpose of this request is that there are now three licensees that are indicted by the Federal Government on serious charges, and there is a possibility that the cases may be in court for several years in the meantime, the licensees in question could continue to pray on the general public."

Section 10, of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 428, partially reads as follows:

> "The commission may upon its own motion, and shall upon written complaint filed by any person, investigate the business transactions of any real estate broker or real estate salesman and shall have the power to suspend or revoke any license obtained by false or fraudulent representation or if the licensee is performing or attempting to perform any of the following acts or is deemed to be guilty of: * * * * ."

Under the above partial section the Commission has the power to suspend, or revoke, any license, by two forms of procedure. First, it may, on its own motion, suspend, or revoke, any license obtained by fraud, or any license of a licensee who is violating any of the subparagraphs in Section 10, which are marked "(a)" to "(k)", inclusive.

It will be noticed that it is discretionary with the Commission to revoke, on its own motion, but Section 10 further provides that it shall, upon written complaint filed by any person, investigate, revoke or suspend the license of a licensee. This part of Section 10, that they must make an investigation, is mandatory, but it is discretionary whether they should revoke or suspend the license.

In your request you state that three licensees are now indicted by the Federal Court, on serious real estate charges, and I am presuming that your inquiry is whether that is sufficient grounds to revoke or suspend their license although there has been no conviction at this time in any of the cases. Under Section 10, it is not necessary that there be a conviction, but the Commission may suspend, or revoke, on the violation of that section. Of course, the proper notice must be given, as set out in Section 11 of the Missouri Real Estate Commission Act, and, in case the Commission should suspend or revoke the license of the licensee, the licensee may appeal to the circuit court in the proper county.

Section 14, of the Missouri Real Estate Commission Act, Laws of Missouri, 1941, page 430, provides that the Commission shall revoke forthwith the license of a licensee if he has been convicted of certain crimes therein set out. This section is mandatory, and it is not necessary that a complaint be made to the Commission. Section 10 of the act, does not require a conviction, before the Commission is authorized to suspend, or revoke, the license of a licensee. It cannot be said that both statutes, that is, Section 10 and Section 14, apply to the same state of facts; nor, can it be said that the legislature uselessly enacted two conflicting sections. In construing two conflicting sections it is the duty of the courts to keep the legislative intent in mind, if it can be ascertained, and the whole act, or such portions thereof as are pari materia should be construed together (State ex rel.

McKittrick, Attorney General v. Carolene Products Company, 144 S. W. (2d) 153, pars. 4-5, 346 Mo. 1049.)

Also, the Supreme Court in the case of State v. Wipke, 133 S. W. (2d) 354, pars. 1-3, 345 Mo. 283, in holding that the legislature would not enact a useless thing, in passing two sections of an act, one of which at first glance appears to be a useless enactment, said:

> "It is a cardinal rule of construction that every word, clause, sentence and section of an act must be given some meaning unless it is in conflict with the legislative intent. Holder v. Elms Hotel Co., 338 Mo. 857, 92 S. W. 2d 620, 104 A. L. R. 339; State ex rel. Kansas City Power & Light Co. v. Smith, 342 Mo. 75, 111 S. W. 2d 513. Respondents rely upon this rule and cite cases of State ex rel. Dean v. Daues, 321 Mo. 1126, 14 S. W. 2d 990; Johnson v. Kruckemeyer, 224 Mo. App. 351, 29 S. W. 2d 730.
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> "With this rule in mind, we cannot agree with respondents that Section 13a must be construed with Section 19. To uphold the respondents, we would have to presume that the Legislature did a useless thing in passing the paragraph dealing with the bond required in Section 13a. The only condition of the bond required by that section is 'the faithful performance of all duties imposed by law upon the licensee, and for the faithful performance of all the requirements of this act,' while one of the conditions of the bond required in Section 19 is that the licensee 'will not violate any of the provisions of this act.' In other words, the conditions of the bond, as contended by respondents, could easily have been covered by Section 19, and the requirements set forth in Section 13a would have been unnecessary. The Legislature enacted

> both Sections 13a and 19 in one bill and it should not be said that the Legislature intended that the two sections of the act should mean one and the same thing. Cohn et al. v. St. Louis, I. M. & S. Railroad Co., 151 Mo. App. 661, 133 S. W. 59."

CONCLUSION

It is, therefore, the opinion of this department that the Missouri Real Estate Commission, after holding a hearing, may suspend the license of a licensee indicted by Federal authorities on serious real estate charges, even though they have not been convicted of the charges.

It is further the opinion of this department that if the license of the licensee is suspended, or revoked, by the Commission, he may appeal to the circuit court of the county in which the hearing was had, or where the applicant resides, to have the proceedings reviewed on a writ of certiorari.

Respectfully submitted

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APPROVED BY:

ROY McKITTRICK
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