

REAL ESTATE COMMISSION:

Commission not authorized to revoke license on written statement or letter of complainants against licensee; Commission may not take depositions outside State.

February 9, 1945



Mr. John W. Hobbs, Secretary  
Missouri Real Estate Commission  
222 Monroe Street  
Jefferson City, Missouri

Dear Mr. Hobbs:

This will acknowledge receipt of the Commission's request for an opinion under date of January 30, 1945, as follows:

"Mr. Philip Lichtenstein, President of the Midwest Realty Corp. of St. Louis, which has been licensed, was formerly an officer of the Lichtenstein Estates, Inc. and as an officer of that company was convicted and fined in the United States Federal Court in St. Louis for an offense which happened before January 1, 1942 when the Missouri Real Estate License Law became effective.

"Since licensing the Midwest Realty Corp. as a Corporation and Mr. Philip Lichtenstein as its President, the Commission has been approached by the St. Louis Better Business Bureau and they filed with the Commission, photostatic copies of a form letter in which several citizens of the State of Illinois stated they had real estate dealings personally with Mr. Philip Lichtenstein in which they claim he made misrepresentations.

"The Opinion desired by this Commission is whether or not the photostatic copies could be used in a final determination on the revocation of the license of the Midwest Realty Corp. and its President, Mr. Philip Lichtenstein; or would it be necessary for these complainants to appear and

testify personally. Also, could the Missouri Real Estate Commission take depositions in the State of Illinois of these particular complainants, to be used at a hearing on the revocation of said license."

The Real Estate Commission Act, Laws of Missouri, 1941, page 424, et seq., provides that a license may be revoked on specified grounds by the Commission only after a hearing. The Act contemplates that a hearing be held and evidence heard bearing on charges set forth in Section 11 of the Act or upon a record showing of a conviction, during the term of the license, of certain offenses under Section 14 of the Act. The evidence at hearing under Section 11 of the Act, should be of witnesses or records and papers bearing on the complaint, or both.

Photostatic copies of a form letter signed by certain non-resident individuals claiming misrepresentations of licensee in dealings he had with them would be insufficient evidence at a hearing to justify a revocation of the real estate license by the Commission. Properly such a form letter presented to the Commission would merely serve the purpose of a complaint or request to the Commission for an investigation of the licensee. For cases as to the lack of evidentiary value of such letters and their insufficiency as evidence, see 32 C.J.S., Section 703, pages 601, 602; *Beckerleg vs. Locomotive Engineers' Mutual Life and Accident Insurance Company*, 274 S.W. 917.

If upon investigation, the Real Estate Commission goes forward with a proceeding to revoke the license of licensee, the individuals who signed the letter or complaint in question, should appear and testify to the charges in person before the Commission at a duly called hearing.

The authority of the Real Estate Commission to take depositions of witnesses in another State is controlled by Section 11 of the Real Estate Commission Act, which is in part, as follows:

"The Commission shall have the power to subpoena and bring before it any person in this state or take testimony of any such person by deposition with the same fees and mileage and in the same manner as prescribed by law in judicial procedure, before courts of this state in civil cases." (Under-scoring ours.)

This statute gives the Commission the power to subpoena and bring before it any person in this State, and the language of the statute also apparently limits the taking of depositions of witnesses to any such person in this State. If the Commission had not been limited by the wording of the statute to the taking of depositions of witnesses in Missouri, it would be authorized to take depositions outside the State as authorized in civil cases, by Article 4 of Chapter 9, R. S. Mo. 1939. Section 9990, R.S. Mo. 1939, authorizing similar procedure for the State Board of Health in the revocation of medical licenses provides greater latitude for the taking of depositions of witnesses in such cases by simply providing:

"\* \* \* Testimony may be taken by deposition, to be used in evidence on the trial of such charges before the board in the same manner and under the same rules and practice as is now provided for the taking of depositions in civil cases."

However, in our opinion, the express wording of the Real Estate Commission Act limits the taking of depositions of witnesses to persons in this State.

#### CONCLUSION.

It is, therefore, the opinion of this Department that photostatic copies of a form letter charging misrepresentations in dealings with a real estate licensee, signed by several citizens living outside the State, would be insufficient as evidence to support the revocation of a real estate license. In such a case the complainants or witnesses should appear and testify in person, or their depositions taken within the State of Missouri, should be offered in evidence at a duly called meeting of the Commission.

The Missouri Real Estate Commission is not authorized to take depositions in a foreign State to be used in a hearing on the revocation of a license for the reason that the statute limits the taking of depositions in such cases to persons in this State.

Respectfully submitted,

R. WILSON BARROW  
Assistant Attorney General

APPROVED:

HARRY H. KAY,  
(Acting) Attorney General

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