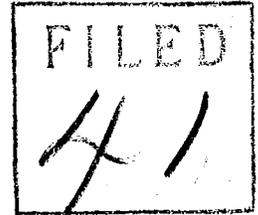


MISSOURI REAL ESTATE COMMISSION:

Authority to promulgate regulations requiring proof of registration of fictitious name as a condition precedent to securing Missouri real estate broker's license.

January 28, 1946



Missouri Real Estate Commission
222 Monroe Street
Jefferson City, Missouri

Attention: Mr. J. W. Hobbs, Secretary

Gentlemen:

Reference is made to your letter of January 24, 1946, requesting an official opinion of this office, and reading as follows:

"May this Commission ask you for an opinion in regard to this Commission making rules and regulations regarding licensees using trade names. There are a great many individual brokers who apply for licenses desiring to have them issued as doing business as some realty company.

"This inquiry is prompted by the fact that the person who is actually licensed does not identify himself with the trade name, and the Commission feels that a person should identify himself with the trade name used, to protect the general public."

There is no question with regard to the right of the Missouri Real Estate Commission to promulgate reasonable rules and regulations looking toward the enforcement of the Missouri Real Estate Brokers' and Salesmen's Licensing Law. Such authority is contained in Section 4 of the Act of the General Assembly found in Laws of Missouri, 1941, page 424, from which we quote, in part:

" * * * said commission may do all things necessary and convenient for carrying into effect the provisions of this act, and may

from time to time promulgate necessary rules and regulations compatible with the provisions of this act. * * * "

In making such rules and regulations, however, certain restrictions upon the Commission must be noted. We direct your attention in that regard to the following found in 59 C. J., "States," page 112:

"Powers granted to state administrative agencies must be exercised in a just and reasonable manner, and in conformity with the statutory or constitutional source of the power conferred."

It then becomes pertinent to make some inquiry into the reasonableness of the proposed rule. It may be conceded that citizens of the State of Missouri may adopt a fictitious name and conduct their business thereunder. We quote from *Bassen v. Monckton*, 308 Mo. 641, l. c. 650:

" * * * Further, the statute does not prohibit them from adopting a fictitious name and trading under it. The statute requires only that they register the fictitious name if they use one. It prohibits them from using it without registration and provides a fine for failure to comply."

The statutes there being considered are now found as Sections 15466 to 15470, inclusive, R. S. Mo. 1939. These statutes, respectively, read as follows:

Sec. 15466. "That every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as hereinafter required."

Sec. 15467. "Every person who shall engage in business in this state under a fictitious name or under any name other than the true name of such person shall, within five days after the beginning or engaging in business

under such fictitious name, register by verified statement of all parties concerned, upon blanks furnished by the secretary of state, such name in the office of the secretary of state, together with the name or names and the residence of each and every person or corporation interested in or owning any part of said business, and setting forth the exact interest therein of each and every such person or corporation: Provided, that if the interest of any person named in the original registration of such fictitious name shall change or cease to exist, or any other person shall become interested therein, such fictitious name shall be reregistered within five days after any change shall take place in the ownership of said business or any part thereof as set forth in the original registration, and such reregistration shall in all respects be made as in the case of original registration of such fictitious name: Provided, that the provisions of this section shall not apply to farmers' mutual insurance companies nor farmers' mutual telephone companies."

Sec. 15468. "For the registration of each fictitious name as in this article required, there shall be paid into the state treasury a fee of two dollars."

Sec. 15469. "Any person who shall engage in or transact any business in this state under a fictitious name, as in this article defined, without registering such name as herein required, shall be deemed guilty of a misdemeanor."

Sec. 15470. "For the purposes of this article the word 'person' shall be construed to include both male and female, plural and singular, partnerships, associations and corporations, as the circumstances of the case may require."

By reason of the enactment of these statutes, it is disclosed that the public policy of the State of Missouri, speaking through its legislature, is to require persons, partnerships,

associations and corporations engaged in business in the State of Missouri under a fictitious name to register such fictitious name with the proper officials, and to provide a penalty for failure to do so. Considering the proposed regulation in the light of this declared public policy of the state, we are persuaded to the view that such a rule would be deemed just and reasonable as being one designed only to require persons seeking real estate licenses under fictitious names to comply with the statutory requirements.

CONCLUSION

In the premises, we are of the opinion that the Missouri Real Estate Commission has the authority to promulgate a rule requiring persons, partnerships, associations or corporations seeking to be licensed to do a real estate business within the State of Missouri to disclose and prove, as a condition precedent to the obtention of such license, that such person, partnership or corporation has complied with the requirements of the statutes relating to the registration of fictitious names.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR