

MISSOURI REAL ESTATE
COMMISSION:

Effect of conviction under Sec. 51, Title 18,
U.S.C.A., upon right to procure real estate
broker's or salesman's license.

May 2, 1947

5-14



Honorable Michael W. O'Hern
First Assistant Prosecuting Attorney
Jackson County
Kansas City, Missouri

Dear Sir:

Reference is made to your letter of recent date, request-
ing an official opinion of this office, and reading as follows:

"A citizen of this County was convicted in the United States District Court for the Western District of Missouri charging violation of Section 51, Title 18, U. S. Code, in the early part of 1938 and on February 2nd, 1938, was sentenced to imprisonment for four years and to pay a fine of \$100.00; on July 18th, 1938, the sentence was modified to two years and a fine of \$100.00. He was received at the United States Penitentiary at Leavenworth, Kansas July 18th, 1938, was released on parole July 18th, 1939, and discharged therefrom by expiration of sentence July 18th, 1940 - fine of \$100.00 was paid July 18th, 1938. In March of 1947 this party was granted a full and unconditional pardon by President Harry S. Truman. He does not have a real estate broker's license in the State of Missouri.

"Question- Would the Missouri Real Estate Commission be acting within the powers granted to the Commission to refuse to grant a license to a person to transact the business of a real estate broker, or real estate salesman because of the conviction of the applicant, after the pardon by the President of the United States? This calls for a legal

construction of the powers of the Commission by virtue of Section 8300.14, Revised Statutes of Missouri, Annotated."

Section 51, Title 18, U.S.C.A., forms a part of the Criminal Code of the Federal Government relative to offenses against elective franchise and civil rights of citizens. The section reads as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

You have referred specifically to Section 8300.14, Mo. R.S.A., and therefore we shall not in this opinion consider other matters which might be considered by the Missouri Real Estate Commission in determining whether or not the applicant should be granted a license. The statute mentioned reads as follows:

"Where during the term of any license issued by the commission the licensee shall be convicted in a court of competent jurisdiction in the state of Missouri or any state (including federal courts) of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a duly certified or exemplified copy of the record in such proceedings shall be filed with the commission, the commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted.

"No license shall be issued by the commission to any person known by it to have been con-

victed of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses, or association or copartnership of which such person is a member, or to any association or copartnership of which such person is an officer, or in which as a stockholder such person had or exercises a controlling interest either directly or indirectly."

Your particular question, then, will be controlled by the construction to be placed upon the second paragraph of the statute quoted. By its terms it authorizes the Missouri Real Estate Commission to deny a license to any person known by the Commission to have been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses. At this point, may we observe that the offenses specifically enumerated are those containing elements of fraud, fraudulent misrepresentation, forgery, breaches of trust, and matters of like import.

Examination of the section of the Federal Criminal Code, quoted supra, discloses that it deals only with offenses against the civil rights guaranteed to persons under the Constitution or laws of the United States. Cases arising thereunder generally are those relating to the rights of citizens to vote, to personal liberty, to have protection against violence, to speedy and public trials, the right to testify, and matters of similar import. It does not cover any of the offenses specifically enumerated in Section 8300.14, Mo. R.S.A.

From the foregoing, it is readily apparent that before a conviction under Section 51, Title 18, U.S.C.A., may serve as the basis for denial of a license to an applicant, it must necessarily be determined that offenses thereunder would be construed to be included within the phrase "or other like offense or offenses" found in the Missouri statute quoted.

To this end, it is a canon of statutory construction that the intent of the Legislature in enacting a statute must be ascertained and due regard given to that intent. We quote from *Donnelly Garment Co. v. Keitel*, 193 S. W. (2d) 577, wherein the Supreme Court of Missouri said:

" * * * And a primary rule of construction of a statute is to ascertain from the language used the intent of the lawmakers if possible,
* * *"

To ascertain such intent, the rule of ejusdem generis is applied by the courts. We quote from *Zinn v. City of Steelville*, 173 S. W. (2d) 398, wherein the Supreme Court of Missouri said:

"Where general words in a statute follow specific words, designating special things, the general words will be considered as applicable only to things of the same general character as those which are specified."
* * *

Further, in ascertaining such legislative intent, another rule of construction which is applied is that where express power is granted to do an act in a certain manner, such act may not be done in any other manner. We quote from *Lancaster v. County of Atchison*, 180 S. W. (2d) 709:

"* * * Where the statute (Section 8548) 'limits the doing of a particular thing in a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done.' *Keane v. Strodtman*, 323 Mo. 161, 18 S. W. 2d 896, 898. See, also, *Dougherty v. Excelsior Springs*, 110 Mo. App. 623, 85 S. W. 112; *Taylor v. Dimmitt*, 326 Mo. 330, 78 S. W. 2d 841, 98 A.L.R. 995."
* * *

Applying these rules of construction to the statute now under consideration, we perceive that the incorporation of the phrase "or other like offense or offenses" would have the effect only of authorizing the Missouri Real Estate Commission to deny a license upon a conviction of an offense similar to those specifically enumerated. As has been pointed out previously, offenses under Section 51, Title 18, U.S.C.A., are completely different in their characteristics and elements than those which have been enumerated. We, therefore, come to the conclusion that such offenses are not within the scope of the quoted phrase "or other like offense or offenses."

As was pointed out at the beginning of this opinion, we are not determining in any manner the effect which might be given such conviction by the Missouri Real Estate Commission in so far as such conviction might affect the reputation of the person for honesty, integrity or fair dealing, or other causes for which a denial of license might properly be made. Neither have we considered the effect of the pardon granted the person referred to in your letter by the President of the

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United States, as the conclusion we have reached has rendered it unnecessary to do so.

CONCLUSION

In the premises, we are of the opinion that the Missouri Real Estate Commission may not deny an applicant a license as a real estate broker or salesman upon the sole ground that such applicant has been convicted of an offense under Section 51, Title 18, U.S.C.A.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR