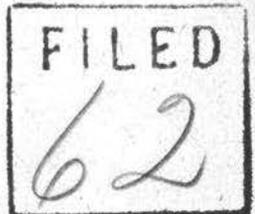


AUCTIONEER:
REAL ESTATE BROKERS:

Auctioneer's license required to sell real estate at public auction, but licensed auctioneer not required to obtain real estate broker's license for such sales.

September 22, 1948



9-23

Honorable Roy C. Miller
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I would appreciate very much an opinion from your office on the subject of the licenses required for the selling of real estate at public auction. I am particularly concerned with the question of whether one who sells real estate at auction is required to have the license required of auctioneers under Sec. 14912 Mo. R.S.A. as well as the license required for real estate brokers under Sec. 8300.1 Mo. R.S.A.? Also, can one who holds only an auctioneers license sell real estate without procuring a real estate brokers license?"

Chapter 116, Mo. R.S.A., Sections 14912 to 14936, deals with public auctioneers.

Section 14912, Mo. R.S.A. provides as follows: "No person shall exercise the trade or business of a public auctioneer by selling any goods or other property subject to duty under this chapter, or real estate, without a license."

Section 14915, Mo. R.S.A. provides as follows: "The licenses shall be under the seals of the respective county courts, signed by the clerk, and shall authorize the persons to whom granted to exercise the trade and business of auctioneers, by selling any property, real or personal, by auction within the county for the period of time specified in such license."

Section 14927, Mo. R.S.A. provides that land and leasehold interests sold at auction shall be free of duty, but there is no provision that a license as an auctioneer shall not be required for such sales.

Section 14936, Mo. R.S.A. provides that any person who violates any provision of the Act shall be guilty of a misdemeanor. A person who sells real estate at public auction without a license violates Section 14912, Mo. R.S.A. and would thereby be guilty of a misdemeanor.

In view of the foregoing provision we think it clear that a person who sells real estate at public auction is required under the above quoted sections to obtain a license.

As for your second question, the Missouri Real Estate Commission Act contains the following provision. "After January 1, 1942, it shall be unlawful for any person, copartnership, association or corporation, foreign or domestic, to act as a real estate broker or real estate salesman or to advertise or to assume to act as such without a license first procured from the Missouri Real Estate Commission." (Section 8300.1 Mo. R.S.A.)

Section 8300.3, Mo. R.S.A. provides that the Missouri Real Estate Commission Act shall not apply to any person who does not advertise or hold himself out to the public as a real estate broker or dealer and who might occasionally buy or offer to buy, or sell or offer to sell, any real estate.

Section 14915, Mo. R.S.A., quoted above, provides that an auctioneer's license shall authorize the person to whom it is granted to exercise the trade and business of auctioneer by selling any property, real or personal by auction. The business of public auctioneer has been recognized in this state since territorial times, the original law having been enacted December 6, 1820 (Territorial Laws, page 694) and having first appeared in Revised Statutes of Missouri in 1825 (page 161). It has remained a part of the laws of this state since that time. In view of the long standing recognition of the business of public auctioneer and of the fact that the public auctioneer's law specifically authorizes the licensee to sell real estate, we feel that the Legislature did not intend to include auctioneers who sell real estate at public auction within the Real Estate Commission Act. The business of a public auctioneer who sells real estate is of an entirely different nature from that of the real estate broker and we feel that the Legislature did not intend to require a duly licensed public auctioneer to secure an additional license from the Missouri Real Estate Commission in order to sell real estate at public auction.

As for your third question, a public auctioneer's license authorizes the holder to sell real estate only at public auction. Should the holder of such license engage in the business of real estate broker as defined in the Missouri Real Estate Commission Act (Section 8300.3 Mo. R.S.A.), which defines a real estate broker as follows: "A real estate broker is any person, copartnership, association or corporation, foreign or domestic, who advertises, claims to be, or holds himself out to the public as a real estate broker or dealer and who for a compensation or valuable consideration as whole or partial vocations sells or offers for sale, buys or offers to buy, exchanges or offers to exchange the real estate of others; or who leases, or offers to lease, rents or offers for rent the real estate of others; or who loans money for others or offers to negotiate a loan secured, or to be secured, by a deed of trust or mortgage on real property," he would thereby become subject to the provisions of that act and would be required to obtain a license thereunder.

CONCLUSION

This department is of the opinion that:

1. A public auctioneer's license is required under Section 14912, Mo. R.S.A. to be obtained by a person who sells real estate at public auction.
2. That a duly licensed public auctioneer is not required to obtain a license under the Missouri Real Estate Commission Act for the sale of real estate at public auction.
3. That a licensed public auctioneer who engages in the business of a real estate broker, as defined by the Missouri Real Estate Commission Act (Section 8300.3 Mo. R.S.A.) is required to obtain a license thereunder.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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