

Opinion No. 217

**Real Estate Brokers—Brokers,
Who Are.**

HELD: A representative of a company, paid a salary and commission for transacting business for the company in selling lands for the company, is a real estate broker and should be required to pay a license fee.

May 23, 1933.

You have submitted the following question: "An outside the state corporation, such as a life insur-

ance company, having acquired property within the state sets up a branch office of their organization within the State of Montana and under the supervision and control of a representative of the parent company operates their branch office. This individual manager is paid a salary, also a commission for transacting the business of the company, which in part may consist of the selling of lands owned by the parent company. A request is hereby made for an opinion as to whether or not such transactions come under the requirements of the Real Estate Act and whether or not such parties, representing outside corporations in handling property owned by them, should take out a real estate dealer's license."

Section 4058 R. C. M. 1921 as amended by Chapter 7, Laws of 1933, reads as follows: "A real estate broker, within the meaning of this act, is a person who for compensation or promise thereof, sells or offers for sale, buys, or offers to buy, negotiates, or offers to negotiate, either directly or indirectly, **whether as the employee of another or otherwise**, the purchase, sale, exchange, of real estate, or any interest therein, for others as a whole or partial vocation. * * * The provisions of this act shall not apply to any person who * * * being the owner of property, sells, * * * nor to any person holding a duly executed **power of attorney** * * * from the owner granting power to consummate the sale * * *."

In the definition of a broker given in 9 C. J. 508, Section 1, it is said: "A person is not a broker * * * who is a salaried agent and not acting for a fee or rate of per cent for others." Since, however, our statute undertakes to define a broker, the general rule would not govern. The question is what meaning shall be given to the phrase "whether as the employee of another, or otherwise."

The State of Oregon in 1919 passed a statute which contained the clause "as principal or the employee of others, or otherwise." This would seem to cover both principal and agent but the law was amended in 1926 and another definition substituted. The State of Idaho in 1921 passed a law which is almost identical with the Montana statute, but that state made the following ex-

ception in case of a salaried employee: "the provisions of this chapter shall not apply * * * to a salaried employee of such owner acting for such owner in the buying, selling * * *."

It will be noted that Section 4058, as amended, made an exception in the case of a person who "being the owner" of property, sells, etc., and the person holding the duly executed power of attorney from the owner, etc. The phrase "whether as the employee of another, or otherwise" is broad enough to cover all employees. Idaho found it necessary to expressly exempt "salaried employees" from the operation of this phrase. On the other hand, our legislature saw fit to make only the two exemptions above mentioned.

In view of the fact that the legislature used such all embracing language and in their exceptions thereto failed to include salaried employees of the owner, I am of the opinion that it was the intention of the legislature to include in the definition of broker, a person who acts as an employee of the owner unless he holds a duly executed power of attorney as specified in the statute or unless the owner, if a corporation, acted through its regular officers.