

**Opinion No. 22****Real Estate Broker—Single Transaction  
—Exemption.**

HELD: The single transaction exemption in the real estate broker law is not necessarily limited to one who makes only one sale.

January 13, 1933.

Your letter requesting an interpretation of section 4058, R. C. M. 1921, has been received. You ask: "Can more than one sale be made and still be classed as a single transaction, although the sales may be made at different times?"

That part of the above section pertaining to single transactions, reads as follows: "The provisions of this act shall not apply \* \* \* to any person who, not representing himself to be, and not following the vocation of real estate broker, as a whole or in part, acts in that capacity for another in connection with a single transaction, \* \* \*"

Your question, as we understand it, is whether more than one sale may be made by a person and he still be regarded as coming within the exemption.

In order to determine whether the transaction is within the exemption, it is necessary to ascertain several facts: (1st) Whether the person represents himself to be a broker; (2nd) whether he was following the vocation of real estate broker, (a) as a whole, (b) or in part; (3rd) whether he acted in that capacity for another in connection with a single transaction.

It is our opinion that where a man acts in more than one transaction he may still be within the exemption of the statute providing he does not represent himself to be a broker or does not follow the vocation of real estate broker in whole or in part. In other words, a person may make an occasional sale of real estate for another if he does not follow the vocation of a real estate broker, or does not represent himself to be a real estate broker. All the circumstances in connection with the sale must be considered. For example: the frequency of such sales and whether the person who made them had any other

occupation might have a bearing upon the question whether such person was following the vocation of a real estate broker as a whole or in part.

In the case of *Miller v. Stevens*, 224 Mich. 626, a case where one who was in the business of selling coal on a commission, in making a sale of real estate was held not a "business chance broker," within the meaning of the statute in that state, the court said: "It can be safely said without reviewing the authorities that the courts have quite generally held that a single sale or act of a private citizen in relation to a vocation prohibited by statute without a license is not, **standing alone**, carrying on the forbidden business."

In that case the court quoted the following definitions of avocation and vocation:

"An avocation is what calls one away from other work; a vocation, or calling, that to which one is called by some special fitness or sense of duty." Fernald's English Synonyms, Antonyms and prepositions.

"Vocation is literally a calling. It conveys the idea of systematic employment in an occupation appropriate to the person employed. It implies specific aptitude in the person, the result of training." Smith's Synonyms Discriminated."

It has been held that the making of an occasional sale by one engaged in other business does not necessarily make such person a broker. "One who, while engaged in other business, makes a single or occasional sale, or other transaction for another under a special contract, is not a broker and is not required to take out a license as such." 9 C. J. 513, Section 15.

While we conclude that one who makes more than one sale may come within the exemption of the statute, you will realize, of course, that it is difficult to lay down a general rule in advance to fit all cases but that the facts of each case must be considered and the law applied thereto.