

OPINION 93

OFFICIAL OPINION NO. 93

October 31, 1951.

Mr. Robert M. Reel,
Executive Secretary,
Indiana Real Estate Commission,
1433 N. Meridian St.,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion concerning Tenants Housing Service of 108 E. Washington Street, in which you say:

“Our investigations have revealed this firm to be operating a finding service, all fees being paid by prospective tenants. A \$5.00 registration fee is charged for the purpose of making a personal and credit report. If the tenant is found to be satisfactory, he or she is then placed on file. If the tenant brings his or her own credit report the \$5.00 finding fee is waived.

“All prospective tenants filing use Exhibits A and B. If the personal and credit investigation is acceptable, they are presented with Exhibit C. If accommodations are found as per the contract an additional fee of \$20.00 is due within ten days after acceptance.

“Exhibit D and E are used to inform landlords of this firm’s services. Upon receipt of calls from landlords, a check is made of the files to locate a suitable tenant with the proper qualifications. The tenant is notified of the vacancy. It is then the responsibility of the tenant to contact the landlord, showing the credentials (Exhibit C) previously issued. If an agreement is reached between the landlord and the tenant. Tenants Housing Service has fulfilled its obligations and the additional \$20.00 fee is due within the following ten days.

“We are informed that no agreement is made between this firm and the landlord, all payments being made by the tenant.

“* * * This department has issued broker’s license No. 7258 to one William Rafie, Rafie Building, Main Street, Burton, Ohio. Mr. Rafie, who is supposed to be the owner of this firm, employs G. G. Spires as manager, who is not licensed, nor is any of the other personnel in the firm licensed by this office.

“Now then, our question is should this service be considered as included under the real estate law? Is it necessary for the representatives of this firm, actively engaged procuring property for tenants, to obtain a license from this office?

“We will appreciate your early opinion.”

Section 22 of chapter 44 of the Acts of 1949, same being Sec. 63-2422 of Burns’ 1951 Supplement, provides in part as follows:

“The term ‘real estate’ and ‘owner of real estate’ shall include all oil rights and interests in Real Estate and including leaseholds, oil leases, oil royalties and all other conveyances of oil or mineral rights. The term ‘real estate broker,’ within the meaning of this act shall include all persons, partnerships, associations and corporations, foreign and domestic who, for another and for a fee, commission, or other valuable consideration, or who with the intention, in the expectation or upon the promise of receiving or collecting a fee, commission or other valuable consideration, sells, exchanges, purchases, *rents or leases, or negotiates* the sale, exchange, purchase, *rental, or leasing* of, or offers, or attempts, or agrees to negotiate the sale, exchange, purchase, rental or leasing of or lists or offers or attempts or agrees to list, or appraises, or offers or attempts or agrees to appraise, or auction, or offers or attempts or agrees to auction, any real estate, or business enterprise, or the improvements thereon; or who buys or offers to buy, sells or offers to sell or otherwise deals in options on real estate or the improvements thereon; or who collects or offers or attempts or agrees to collect rental for the use of real estate, *or who advertises or holds himself, itself, or themselves out* as engaged in the business of selling,

exchanging, purchasing, *renting*, or *leasing real estate*, or *assists*, or *directs in the procuring of prospects or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing or renting of any real estate*. The term 'real estate broker' shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lost or other parcels of real estate, at a stated salary, upon a commission, upon a salary and commission basis or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer, attempt or agree to negotiate the sale or exchange of any such lot or parcel or real estate.

"The term 'real estate salesman' shall include any person who, for a salary, commission or compensation of any kind, is employed either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase, or *negotiate for the sale*, purchase, exchange or renting of any real estate." (Our emphasis.)

This section is extremely broad and would seem to comprehend almost any type of transaction which by any use of the imagination might seem to be associated with real estate and its leasing and renting. However, it is necessary to examine the act as a whole in order to determine what application and scope it is to be construed to have.

Section 11 of the act, found in Burns' 1951 Replacement, section 63-2411, provides for an examination of applicants for licensure as real estate agents or brokers. The subject matter to be covered in that act is as follows:

"* * * questions pertaining to sale, listing, and procedures involved in dealing with real estate * * *."

At best what this would seem to indicate is that type of transaction subject to being regulated would be that type of transaction which would require some knowledge of matters pertaining to the sale or listing of real estate. Similarly, it is well to note section 15 of the act, found in Burns' 1951 Replacement, section 63-2415. That section deals with revocation of a real estate agent's or broker's license. It lists twelve

grounds for such revocation. An examination of grounds provided make it clear that the purpose of the act is to prevent certain persons who act in a semi-fiduciary capacity from being allowed to put themselves in the position of doing unconscionable acts or engaging in shady transactions, that is to say, persons who receive money for the benefit of another or persons who act beyond the scope of their actual authority in acting for another in the sale or leasing of real estate.

In examining the plan and scheme of operation of Tenants Housing, it is clear that it performs merely the purpose of bringing together persons who might be interested in dealing with each other. It does not purport to deal for either on behalf of the other. It is merely an aid in procuring the meeting of minds of two persons who might be interested in a rental contract for real estate. Tenants Housing represents neither. It takes no part in the negotiation of any contract arising from this meeting. It performs the function traditionally performed by an advertising medium and for the purpose of licensure is in the same position as other advertising media. Thus, it is clearly without the scope intended by the Real Estate Licensure Act of Indiana.

Therefore, it is my opinion that Tenants Housing Service and its employees, as long as they confine themselves to their usual practices as outlined in your letter of request, are not required to be licensed, either as real estate brokers or real estate salesmen.

OFFICIAL OPINION NO. 94

October 19, 1951.

Honorable Edmund F. Makowski,
State Senator, Lake County,
State House,
Indianapolis, Indiana.

Dear Senator Makowski:

Your written request has been received requesting an official opinion on the following question:

“Will you please give me an official opinion as to the validity of Chapter 236, Acts of 1949. I under-