

OFFICIAL OPINION NO. 73

November 30, 1950.

Honorable Robert M. Reel,
Executive Secretary,
Indiana Real Estate Commission,
1433 North Meridian Street,
Indianapolis, Indiana.

Dear Sir:

I have your letter dated November 6, enclosing a letter from Mr. A. L. McKee, a member of your Commission propounding certain questions, which letter reads as follows:

“Permit me to submit a situation that is confronting us at this time and will become more accute as the first of the year approaches.

“William A. Risley, 3711 Main Street, this City, is a licensed broker, and as a licensed broker, with his wife and attorney owned and operated the Anderson building and Finance Corporation at the same address, and secured for the corporation a brokers license. Due to ill health and doctor’s orders he was compelled to spend his winters in Florida, but always hired licensed salesman to operate in his absence.

“Effective as of approximately September 1st, 1950, Mr. Risley and his wife sold all of the corporate stock which they owned to two men who are contractors and and are neither licensed brokers nor licensed salesmen. Although they feel they could pass the salesman examination they have expressed doubt as to their ability to pass the brokers examination.

“These two men are now the principal officers and controlling stock owners in the corporation and they have employed Robert Steiner, a licensed broker of this city as their Sales Manager, and ultimately may sell him some stock in the corporation and may elect him an officer, but his connection is only for the purpose of conducting the brokerage business and probably employ salesmen.

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“These two principal owners expect to conduct the building department of the business and questions naturally arise.

“1. Can these two builders take a salesman’s license examination and maintain a salesman’s license under the brokers license issued to the Anderson Building and Finance Corporation, of which they are the principal officers?

“2. Can they elect the licensed broker as an officer of the corporation and on the basis of his individual brokers license maintain the corporation broker license?”

I believe your questions can be answered by reference to Sections 9 and 11 of Chapter 44 of the Acts of 1949, Burns (63-2409, *et seq.*). The pertinent provisions of these sections read as follows:

Section 9. “* * * Every person acting for himself, every member of a firm, partnership, association or corporation participating or engaged in the real estate brokerage or as a real estate salesman therefor shall obtain and keep renewed and wholly unrevoked a license as a real estate broker or real estate salesman as herein required.”

Section 11. “* * * if the applicant is a corporation, all officers or agents thereof seeking to engage on its behalf as a real estate broker or salesman shall pass such examination.”

In an opinion of the Attorney General dated September 28, 1949, (Official Opinion Number 91) the following question was raised:

“When maintaining a Real Estate Department handling property management, appraising and brokerage for others, will it be necessary to obtain a license as a corporation or shall they license only those individuals actively engaged in real estate transactions.”

The answer to that question was:

“The corporation and all persons engaged in handling sales or making appraisals must have a license.”

Although a corporation is a separate legal entity it can only act by and through natural persons. A proper construction of Sections 9 and 11, parts of which are set forth above requires that all persons acting for and on behalf of a corporation in real estate transactions must be individually qualified as well as the corporation itself. Thus, before a corporation could be licensed and act as a real estate broker there must be some natural person licensed as a broker to act for the corporation.

Thus, in answer to your first question the two builders could not maintain salesmen's licenses under the broker's license issued to the corporation unless there is some natural person holding a broker's license acting for the corporation.

The answer to your second question is in the affirmative for the reason that as long as a natural person is a licensed broker and is acting for and on behalf of a corporation, the corporation's brokerage license may be maintained.

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December 12, 1950.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I have your request for an official opinion in which you state:

“By the definitions and limitations under Section 1, Chapter 319, Acts 1947, Burns 5-1711, it is believed the only townships presently affected are: under clause (a) New Albany Township, Floyd County which said township lies wholly within a third class city; under