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OFFICIAL OPINION NO. 89

September 23, 1949.

Honorable Joe McCord, Director,
Department of Financial Institutions,
Room 410 State House,
Indianapolis, Indiana.

Dear Mr. McCord:

Your request for an official opinion as to the construction and interpretation of the provisions of Chapter 44 of the Acts of 1949 is before me. It is as follows:

“The question has been raised in this department as to whether banking institutions, building and loan associations and other financial institutions, or their officers, directors or committee members would be considered as Real Estate Brokers, or Real Estate Salesmen, subject to the licensing provisions of House Enrolled Act 41, Chapter 44 of the Acts of 1949, as a result of appraisals of real estate upon which the institutions propose to make mortgage loans.

“It is the practice of the above mentioned institutions, upon receiving applications for real estate mortgage loans, to designate certain officers, directors or committee members to appraise the real estate offered as security. The institution may, or may not charge an appraisal fee to meet expenses incurred. Such officers, directors or committee members may receive directors' fees or fees for serving on committees and may perform such duties as making appraisals without additional compensation.”

The substance of your question is the application of this Act and its provisions to the appraisal by officers, directors or

regular employees of a bank in the process of making real estate mortgage loans.

There can be no pretense that the Act does not include banks and financial institutions which engage in any manner in real estate transactions which may be designed to result in sales, exchanges or renting of real estate. But there is nothing in the Act which indicates an intention to include the process of granting mortgage loans on real estate. The pertinent provisions of the act are as follows:

“SEC. 9. A single act performed for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others shall constitute the person performing any of such acts, a real estate broker or real estate salesman and shall require the license herein prescribed and the same to be renewed as herein prescribed and in no wise revoked or canceled by the Commission. 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.”

“SEC. 22. 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 lots 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 of 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."

It is well to note that in Section 11 an examination is provided in that Section 13 is provided that a broker must display his license in his place of business. The Commissioner is given power to regulate the issuance of licenses and to suspend or revoke them for certain causes enumerated in Section 15. The Title of the Act is as follows:

"AN ACT regulating real estate brokers and real estate salesmen, and prescribing penalties for the violation thereof."

Although the Title of An Act is not in fact one of the provisions of the Act it is helpful as an aid to construction

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and must be construed with the Act as a whole in order to determine the legislative intent.

If any provision of the Act would indicate that appraisements in the limited situation you present, should be included, it would be the part of Section 22 which in defining the real estate broker provides that one who "appraises, or offers, or attempts or agrees to appraise" shall be a real estate broker, but in looking at the Act as a whole and in noting the provisions of such sections as Section 9 it becomes apparent that the above statement refers to appraisal in the process of buying, selling, exchanging, leasing, renting, etc. of real estate and is not intended to broaden the scope of the Act to include appraisals in the situation you present, made solely for the purpose of mortgage loans.

It seems clear that the Act is designed to prevent fraud and deceit in the above enumerated type of transactions. Although the police power is subject to the limitations that its exercises must be reasonable and in the public interest.

Buchanan v. Worky, 245 U. S. 60;
Max Factor Company v. Kunsman, 55 Pacific
2nd 177, 299 U. S. 198.

There can be no doubt that there is a public interest in the prevention of fraud. That the purpose of construction of statutes is to determine the legislative intention has been often affirmed.

Scannell v. State, 87 N. E. 2nd 16;
Illinois Bell Telephone Company v. Fox, 85 N.
E. 2nd 43;
Commonwealth v. Real Estate Trust Company,
60 Atl. 551.

And it is also a well accepted fact that the Courts will look to the general scope and purpose of the statute to determine the legislative intention.

City of Indianapolis v. Evans, 216 Ind. 556.

It is for these reasons that it is my opinion that although there can be no doubt that the Act does include banks and financial institutions in many of their phases and includes

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most persons who make appraisals. It does not require the licensing of officers, directors, or regular employees of the bank because of the sole fact that they make appraisals for the purpose of real estate loans.

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OFFICIAL OPINION NO. 90

September 27, 1949.

Mr. Willis K. Batchelet,
State Senator,
Angola, Indiana.

Dear Sir:

Your letter of September 10, 1949, requesting an official opinion reads as follows:

"As State Senator, I respectfully request an official opinion on the following:

"Chapter 26, Acts of 1949, page 72, amending section 8 of the Acts of 1933 (Section 48-1219, Burns' Ind. Stats. Anno., 1933) states that the mayor shall act as city judge in cities of the 5th class, and that the duty shall devolve wholly upon the mayor. The 1949 amendment, in this respect, did not change the 1933 Act.

"Does the 1949 amendment, repeal by implication, the provision for appointment of a city judge under the Acts, 1945, Chapter 277, section 1, page 1244 (Section 4-2614, Burns' Ind. Stats. Anno., 1946 replacement volume) ?

"If the 1945 Act is held to be repealed by implication, would a city judge, duly appointed and qualified for a stated term of 1 year, on September 1, 1949, be permitted to complete that term?"

The 1949 Act purported to re-enact the provisions of Section 8 of the 1933 Act relative to Mayors of cities of the fifth (5th) class acting as city judges. The only change made in