

that the final tax base under the ad valorem tax laws, i.e., assessments as finally equalized, must amount to the same proportion of true cash value, not exceeding fifty percent, and that such uniform tax base be subjected to an identical uniform millage. In other words, the Constitution prohibits the utilization of different levels of true cash value for different species or classes of property and additionally proscribes different millage rates in a taxing unit against different properties.

Number 152, P.A. 1970, continues recognition of this basic constitutional design. It envisages that by separate equalization, both real and personal property will be *finally* assessed at the same proportion, namely, fifty percent, of true cash value. The amendatory Act No. 152, additionally appreciates the fact — footnoted in the *General Motors* case, *supra* — that application of the same formula in the equalization of personal property as is applied to equalize real property, may yet produce a nonuniform tax base.

It is my opinion that No. 152, P.A. 1970, is a legislative design to achieve greater uniformity by the separate computation of the tax base (equalized values for real and personal property, respectively). It is designed to prevent inequalities which might result from a single or one-step equalization process. Consequently, it implements and furthers the constitutionally mandated tax uniformity.

In answer to your second question, I find that the provisions of No. 152, P.A. 1970, are not in conflict with any other section of the general property tax act. Further, if an inconsistent provision should be discovered, it would have to yield to the 1970 legislation which, by its terms, is to be effective "notwithstanding any other provision of this act," i.e., the general property tax act.

FRANK J. KELLEY,
Attorney General.

710514.1

BROKERS: Definition of real estate broker.

LICENSING AND REGULATION: Licensing of real estate brokers.

REAL ESTATE: Broker licensing requirements for owners of real estate.

A profit corporation, partnership or individual whose principal business activity is buying and selling real estate, but which does not engage in the sale of real estate for others, is required to be licensed as a real estate broker.

A profit corporation, partnership, individual or other legal entity engaged in the buying and selling of real estate for its account on a continuing basis, but which has another vocation, is required to be licensed as a broker, unless the real estate work of such entity is not its main occupation or where it spends a major portion of its time.

A profit corporation, partnership or individual engaged in the sale of its own property and subject to the broker licensing requirements is not required to have a license if it makes those sales through a duly licensed broker.

No. 4669

May 14, 1971.

Charles E. Harmon, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926

You inform me that a considerable number of individuals, partnerships and corporations which buy and sell real estate for their own benefit and profit, but not for others, are principally engaged in the real estate business without a real estate broker's license under 1919 P.A. 306, as amended by 1969 P.A. 143 and 1969 P.A. 298.¹ You state:

"In most cases, the investment company is a corporation, with the declared purpose in its articles of incorporation to buy and sell real estate"

In addition, you state:

"Many of the principals of such investment companies or entities claim that they have not become licensed as real estate brokers upon legal advice that they do not sell for others. However, they do not dispute the fact that such investment companies or entities are engaged principally in the buying and selling of real estate for profit."

Therefore, you have requested my opinion on several questions. The first three questions shall be answered together.

You ask:

"1. Is a profit corporation, whose principal business activity is buying and selling real estate for its own benefit and profit, but which does not engage in the sale of real estate for others, required to be licensed as a real estate broker under the provision of Act 306 of the Public Acts of 1919, as amended?"

"2. Is an individual whose principal business activity is buying and selling real estate for its own benefit and profit, but who does not engage in the sale of real estate for others, required to be licensed as a real estate broker under the provisions of Act 306 of the Public Acts of 1919, as amended?"

"3. Is a partnership, whose principal business activity is buying and selling real estate for its own benefit and profit, but which does not engage in the sale of real estate for others, required to be licensed as a real estate broker under the provisions of Act 306 of the Public Acts of 1919, as amended?"

Act 306, *supra*, provides in its title:

"AN ACT to define, regulate and license real estate brokers and real estate salesmen, including within the term real estate broker, also those who act as real estate appraisers, real estate mortgage brokers, building job brokers, business chance brokers and those who, as owners or otherwise, engage in the sale of real estate as a principal vocation, and persons employed by any of them as salesmen, and to provide a penalty for a violation of the provisions hereof."

¹ M.C.L.A. 451.201 et seq; M.S.A. 19.791 et seq.

Section 1 of the act² provides:

"It shall be unlawful for any person, firm, partnership association, copartnership or corporation, whether operating under an assumed name or otherwise, from and after January first, 1920, to engage in the business or capacity, either directly or indirectly, of a real estate broker or real estate salesman within this state without first obtaining a license under the provisions of this act."

Section 2 of the act³ defines a real estate broker as:

"A real estate broker within the meaning of this act is any person, firm, partnership association, copartnership or corporation, who with intent to collect or receive a fee, compensation or valuable consideration, sells or offers for sale, buys or offers to buy, appraises or offers to appraise, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of buildings thereon, or who leases or offers to lease or rents or offers for rent any real estate or the improvements thereon for others, as a whole or partial vocation, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the good will of an existing business for others, or *who, as owner or otherwise, engages in the sale of real estate as a principal vocation* . . . The provisions of this act shall not apply to any person, firm, partnership association, copartnership or corporation, who as owner or lessor or as attorney-in-fact acting under a duly executed and recorded power of attorney from such owner or lessor, or who has been appointed by court, shall perform any of the acts aforesaid with reference to property owned by them, unless performed as a principal vocation not through brokers duly licensed hereunder, . . ." (emphasis supplied)

In addition, section 3 of the act⁴ reads as follows:

"One acting for a compensation or valuable consideration of [in] buying or selling real estate of or for another, or offering for another to buy or sell or exchange or mortgage or appraise real estate, or to negotiate for the construction of buildings thereon, or leasing or renting or offering to rent real estate, or selling or offering for sale, or buying or offering to buy, or leasing or offering to lease, or negotiating the purchase or sale or exchange of a business, business opportunity, or the good will of an existing business for others, *or one who, as owner or otherwise, engages in the sale of real estate as a principal vocation, except as herein specifically excepted, shall constitute the person, firm, partnership association, copartnership or corporation performing, offering or attempting to perform any of the acts enumerated herein, a real estate broker or a real estate salesman within the meaning of this act.* The commission of a single act prohibited hereunder shall constitute a violation." (emphasis supplied)

² M.C.L.A. 451.201; M.S.A. 19.791.

³ M.C.L.A. 451.202; M.S.A. 19.792.

⁴ M.C.L.A. 451.203; M.S.A. 19.793.

From the purpose of the act, as expressed in its title, through sections 2 and 3, it seems clear that owners of property who operate in the fashion of a broker described in section 2 with regard to their own property are not exempt from the licensing provisions of the act if they operate in the real estate business as a principal vocation and not through duly licensed brokers. This interpretation would apply regardless of whether the owner is a corporation, partnership, person or other entity. Your first three questions all refer to entities whose principal business activity is buying and selling real estate for profit. Assuming you are using the words "principal business activity" in the sense of one's main employment or occupation, then such persons are engaged in the sale of real estate as a principal vocation. They must, therefore, be licensed as real estate brokers, regardless of whether or not they are engaged in the sale of real estate for others.

Attorney General Stephen J. Roth ruled as much on related facts.⁵ He held that an individual whose license as a real estate broker has been revoked could not as his sole occupation engage in the purchase and sale of options to purchase real estate or purchase real estate in his own name and resell it. In reference to the above conduct, Attorney General Roth stated:

"Permitting or sanctioning the practices presently indulged by the subject of your inquiry would not only result in a bold circumvention of the requirements of the statute and encourage subterfuge to defeat its purpose, but it would tend to create the very condition which the statute aims to eliminate." (p. 498).

A plain reading of the act indicates that the legislature intended to cover anyone who is primarily engaged in the real estate business. One who deals with the public extensively in the sale of real estate is required to subject himself to the regulation of the department of licensing and regulation and acquire a license from that department. He must satisfy the department that he possesses the business experience and knowledge of real estate to be permitted to deal with the public without jeopardizing its welfare.⁶ In addition, he is held accountable by the department for his activities in the real estate profession. Section 13 of the act⁷ empowers the department to revoke or suspend any license for a number of reasons, all of which relate to the protection of the public. Section 15a of the act⁸ permits the department to require a bond or cash deposit upon the reissuance of any revoked or suspended license or upon the issuance of a license to any applicant who has heretofore been denied licensure. An injured citizen may bring an action on the bond or a claim against the cash deposit for damages he has suffered at the hands of a broker. To exempt owners of property principally engaged in the real estate business from the above provisions solely because they are selling their own property would defeat the purpose of the act and leave a large number of citizens unprotected.

⁵ O.A.G. 1949-1950, No. 1172, p. 497 (March 16, 1950).

⁶ M.C.L.A. 451.208; M.S.A. 19.798.

⁷ M.C.L.A. 451.213; M.S.A. 19.803.

⁸ M.C.L.A. 451.215a; M.S.A. 19.805(1).

An owner of property who makes an occasional sale of his property is not required to be licensed. He is not principally engaged in the real estate business, and the extent of his contact with the public is limited. The original title of the act did not contain the present clause which defines as a real estate broker "those who, as owners or otherwise, engage in the sale of real estate as a principal vocation . . ." The title of the act was amended by 1939 P.A. 268 to include those words. In addition, section 2 of Act 306 originally provided, among other things:

" . . . The provisions of this act shall not apply to any person, firm, partnership association, copartnership or corporation, who as owner or lessor shall perform any of the acts aforesaid with reference to property owned by them, . . ." 1929 C.L. 9807.

1939 P.A. 268 amended that provision to read:

" . . . The provisions of this act shall not apply to any person, firm, partnership association, copartnership or corporation, who as owner or lessor or as attorney-in-fact acting under a duly executed and recorded power of attorney from such owner or lessor, or who has been appointed by court, shall perform any of the acts aforesaid with reference to property owned by them, *unless performed as a principal vocation not through brokers duly licensed hereunder, . . .*" (emphasis supplied)

1919 P.A. 306, § 3, was also amended by 1939 P.A. 268, above cited, to include the new reference to owners who engage in the sale of real estate as a principal vocation. Clearly, the legislature realized it was not sufficient to define a broker as one who sold for another, specifically exempting owners, when an owner could escape regulation even though he was dealing with the public as much as a nonowner. Thus the ownership exemption, by virtue of 1939 P.A. 268, was restricted to those owners not engaged in real estate as a principal vocation.

This interpretation is not refuted by the holding in *Summers v. Hoffman*,⁹ where the court held that section 2 of Act 306 did not require a party to a joint venture to obtain a broker's license in order to sell the land of the joint venture. Since the court defined a joint venture as an association of joint undertakers to carry out a single project for profit, by the very nature of that definition neither co-venturer could be engaged in the sale of real estate as a principal vocation.

Therefore, your first three questions must be answered in the affirmative.

Your fourth question entails two separate questions involving different factual situations. They shall be answered seriatim. You ask:

"4. If an individual, partnership, corporation or other legal entity engages directly or indirectly in buying or selling real estate for its own account on a continuing basis and pattern of conduct as distinguished from single nonrepetitive transactions, is it required to be licensed as a real estate broker:

⁹ 341 Mich. 686 (1955).

- “(a) If such legal entity has another vocation such as that of a lawyer, physician, druggist, engineer, etc.?”
- “(b) If it does not have another vocation but engages in such activities as a main and principal vocation, either
- “(1) Full time, or
- “(2) As a supplementary activity, on a part time basis?”

The answer to your question revolves around the phrase “principal vocation” used in section 2 and elsewhere in the act. The act does not define those terms. Black’s Law Dictionary defines the word “vocation” as:

“One’s regular calling or business . . . The activity on which one spends major portion of his time and out of which he makes his living . . .” Black’s Law Dictionary, 4th Ed. 1951, p. 1745.

Black’s Law Dictionary defines “principal” as:

“Chief; leading; most important or considerable; primary; original . . .” Black’s Law Dictionary, *supra*, p. 1355.

These definitions indicate that the phrase “principal vocation” means one’s main occupation or where he spends a major portion of his time.

In *Miller v. Stevens*¹⁰ the court considered the following definition of “vocation” in construing 1919 P.A. 306, as amended:

“Vocation is literally a calling. It conveys the idea of systematic employment in an occupation appropriate to the person employed. It implies a specific aptitude in the person, the result of training.—Smith’s Synonyms Discriminated.” (p. 631)

and concluded that plaintiff’s regular business, or vocation, was selling coal on commission.

In *Anderson v. United States Civil Service Comm.*¹¹ the court ruled that an attorney who spent 75% of his time in private practice and only 25% of his time as legal advisor to the department of public welfare of Montana was principally employed as a private attorney and not subject to the provisions of the Hatch Act.

The Supreme Court of Errors in Connecticut used the percentage of gross earnings to determine the principal business of the plaintiff in *Hartford Steam Service Co. v. Sullivan*.¹² There the court ruled that a company which received 75% of its gross earnings for furnishing steam to heat buildings and only 25% for furnishing chilled water for cooling buildings was subject to a statute which placed a tax on companies whose principal business was manufacturing, selling or distributing gas, electricity or steam to be used for light, heat or power.

It is obvious that there can be no hard and fast rule as to when one becomes involved in real estate as a principal vocation. A determination will depend on the facts of each specific case. However, the department of licensing and regulation may want to set forth rules for determining what is a “principal vocation” for purposes of enforcing 1919 P.A. 306, as

¹⁰ 224 Mich 626 (1923).

¹¹ 119 F. Supp. 567 (D. Mont., 1954).

¹² 202 A2d 246 (Conn., 1964).

amended. References to time spent, percentage of income and how a particular entity represents itself to the public all appear to be relevant considerations. Such rules would be within the department's powers under section 8 of the act.¹³

The second part of your fourth question asks if an individual, partnership, corporation or other legal entity engaged in buying and selling real estate for its own account on a continuing basis is required to be licensed if it does not have another vocation but engages in such activities as a main and principal vocation either full-time or part-time. For the reasons discussed earlier, such an entity is required by the act to be licensed.

Your fifth and last question must be answered in the negative due to the qualification contained in section 2 of the act with regard to owners of property. Your fifth question states:

"5. If any of the answers to the above questions are in the affirmative, would such answers be affirmative if the corporation, individual or partnership employs a licensed real estate broker to negotiate and consummate all of its purchases and sales of real estate bought and sold in such business?"

Section 2 of the act¹⁴ exempts owners whose principal vocation is real estate if they operate through a duly licensed broker. In other words, section 2 exempts from the act owners of property who perform in the fashion of brokers with reference to their own property for two reasons: (1) if they perform said acts not as a principal vocation, or (2) even if they perform said acts as a principal vocation, if the acts are performed through a duly licensed broker. The relevant provision in section 2 provides:

" . . . The provisions of this act shall not apply to any person, firm, partnership association, copartnership or corporation, who as owner or lessor . . . shall perform any of the acts aforesaid with reference to property owned by them, *unless performed as a principal vocation not through brokers duly licensed hereunder, . . .*"
(emphasis supplied)

The policy of protecting the public is satisfied when an owner, corporate or otherwise, buys and sells its land exclusively through a licensed broker. In this case, a broker representing an owner will have satisfied the statutory qualifications of competence and business experience and will be accountable to the state for any wrongdoing related to the sale of the owner's land.

To summarize the legal conclusions reached above, it is my opinion that a profit corporation, partnership or individual whose principal business activity is buying and selling real estate, but which does not engage in the sale of real estate for others, is required to be licensed as a real estate broker under the provisions of 1919 P.A. 306, as amended. An individual, partnership, corporation or other legal entity engaged in the buying and selling of real estate for its own account on a continuing basis, but which has another vocation, is required to be licensed as a broker under 1919 P.A. 306, as amended, unless the real estate work of such entity is not

¹³ M.C.L.A. 451.208; M.S.A. 19.798.

¹⁴ M.C.L.A. 451.202; M.S.A. 19.792.

its main occupation or where it spends a major portion of its time. A determination of that fact will have to be made by the department of licensing and regulation. If said entity does not have another vocation and engages in such real estate activities as a main and principal vocation, it is required to be licensed as a broker under 1919 P.A. 306, as amended, regardless of whether such entity operates full- or part-time. In all of the above instances where an individual, partnership, corporation or other legal entity is subject to the licensing requirements of the act, such entity is not required to be licensed if it negotiates and consummates all of its transactions through a broker duly licensed under 1919 P.A. 306, as amended.

FRANK J. KELLEY,
Attorney General.

710607.2 _____

WATER RESOURCES COMMISSION: Power to promulgate water quality standard orders.

Water Resources Commission has broad and comprehensive power to regulate water quality standards and to abate water pollution.

No. 4721

June 7, 1971.

Mr. Ralph W. Purdy, Executive Secretary
Water Resources Commission
Mason Building
Lansing, Michigan

You have requested my opinion concerning the authority of the water resources commission to control and abate pollution of Michigan's waters pursuant to the provisions of the water resources commission act, as amended, 1929 P.A. 245, as amended; M.C.L.A. 323.1 et seq; M.S.A. 3.521 et seq.

Your inquiry may be paraphrased as follows:

May the commission establish water quality standards for receiving waters pursuant to Section 5 of 1929 P.A. 245 in order to maintain existing water quality and thereafter control and regulate discharges into the receiving waters under Section 6(a) of 1929 P.A. 245 to meet the requirements of said standards?

Section 5 of 1929 P.A. 245, M.C.L.A. 323.5; M.S.A. 3.525, which authorizes the commission to establish water quality standards for receiving waters, provides in pertinent part as follows:

"The commission shall establish such pollution *standards* for lakes, rivers, streams and other waters of the state *in relation to the public use* to which they are or may be put, as it shall deem necessary. * * * It shall have the authority to make regulations and orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake, river, stream, or other waters of the state. It shall have the authority to take all appropriate steps to prevent any pollution which is deemed